



THE BERMUDA CHAMBER OF COMMERCE

REAL ESTATE DIVISION

Ethics and Standard Practices
For Bermuda Real Estate
Brokers and Agents



September 2024

The Real Estate Division Ethics and Standard Practices for Bermuda Real Estate Brokers and Agents (“ESP”)

The Real Estate Division of the Bermuda Chamber of Commerce (RED) comprises real estate professionals in Bermuda including but not limited to Licensed Real Estate Brokers and Agents, Chartered Surveyors and Property Management Firms.

The Real Estate Division (RED) nominates an Executive Committee which meets monthly to discuss issues related to the Division’s and the Real Estate Industry as a whole.

Any members of The Chamber of Commerce are welcome to attend/observe these meetings.

The objectives of the RED are primarily to ensure higher standards of conduct and competence amongst members and with members of the public. The RED shall liaise with the Bermuda Government, Banks and Lawyers on behalf of the Real Estate Industry and to standardize operating procedures amongst member real estate firms.

A full list of member firms of the Real Estate Division of the Bermuda Chamber of Commerce can be found on the Bermuda Chamber of Commerce’s website:

<https://www.bermudachamber.bm/list/ql/real-estate-31>

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Bermuda Chamber of Commerce Real Estate Division ESP

2024

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1. Statement of Purpose and Overview

The objectives of the Real Estate Division are:

- 1.1 to ensure high standards of competence and conduct among Real Estate Brokers and Real Estate Agents at all times;
- 1.2 to increase public knowledge or awareness of the services provided by realtors;
- 1.3 to recommend and review legislation pertaining to the industry;
- 1.4 to standardize operating procedures among members;
- 1.5 the regulations contained herein supersede all regulations in any previous Real Estate Division ESP.

2. Glossary of Terms

The following words used herein are deemed to have the meanings specified below.

- Advertising – is defined as advertising, promotion or marketing by any media i.e. print or electronic
- Agent – the person who is engaged by a Broker, and licensed under the Real Estate Brokers’ Licensing Act 2017 or any subsequent amendments or Acts
- Broker – the person or persons listed and licensed under the Real Estate Brokers’ Licensing Act 2017, as holding the brokerage license for a real estate firm
- Brokerage – a firm permitted to engage in trading in real estate by virtue of one or more of its members holding a real estate Broker’s license in accordance with the terms of the Real Estate Brokers’ Licensing Act 2017 or any subsequent amendments or Acts.
- Client – normally deemed to be a vendor or landlord who has engaged the services of that Brokerage for the purposes of selling or renting his property; a prospect may be a client only in the event that he has contractually engaged the Brokerage to represent his interests.
- Co-Broker – a Brokerage which is party to an agreement to represent property listed by another Brokerage (the Listing Brokerage) for a share of the commission.
- Customer – a prospect (see below)
- Employee – an individual who is engaged and compensated accordingly by a Brokerage to perform specific tasks other than, or in addition to, trading in real estate (trading as defined in the Real Estate Brokers’ Licensing Act 2017 or any subsequent amendments or Acts).

- Executive Committee – are members which are proposed and ratified at the Annual General Meeting. The Executive Committee shall comprise of not less than 12 members and not more than 18 members.
- Listing Broker – a Brokerage, possessing a valid signed property listing, consents by agreement that another Brokerage (the Co-Broker) may show and represent the property for a share of the commission.
- Member – a Brokerage or licensed agent of a Brokerage or any persons deemed appropriate to the goals and objectives of The Division who has satisfied all membership requirements and is a member in good standing of The Bermuda Chamber of Commerce.
- NAR – National Association of Realtors
- Prefixes – “Co” means no more than two Agents,
“Joint” means to share equally
- Prospect – a prospective buyer or tenant
- Quorum of Executive Committee meetings – the minimum number of nine members of the Executive Committee required to be present at any Committee meeting to validate the proceedings.
- Quorum of Divisional Annual General Meeting – shall be twice the number of Executive Committee members
- Quorum of Special General Meeting – shall be a minimum of nine members of the Executive Committee members
- Real Estate Brokers’ Licensing Act 2017 – replaces the Real Estate Agents’ Licensing Act 1976
- Realtor – for the purposes of this ESP, the general term to include a real estate Broker or Agent acting on behalf of a licensed Brokerage
- RED – Real Estate Division (of The Chamber of Commerce)
- Reference – all references to vendor shall be taken to imply landlord equally. All references to purchaser shall be taken to imply tenant.
- Staff – see “employee”.

3. Division Operations

3.1 Membership

The Executive Board of The Bermuda Chamber of Commerce has the right to assign members to The Division, upon consultation and representation by The Real Estate Division. The Division has the duty to ensure that the highest standards and ethics are practiced by all Members and shall have the right to

make representation to The Executive Board of The Chamber of Commerce for disciplinary action, suspension or expulsion of a Member. (Ratified 17March2021)

3.1.1 Membership Requirements of The Bermuda Chamber of Commerce

- a) Members agree to be bound by the Constitution and any Bylaws of The Bermuda Chamber of Commerce and agree to abide by the guidelines set out herein, as they may from time to time be amended.
- b) Members who do not support or comply with the Constitution and objectives of The Bermuda Chamber of Commerce, may be represented to The Executive Board of The Bermuda Chamber of Commerce for such member to be removed from The Division.
- c) Membership Dues are paid directly into the General Revenue Fund of The Chamber of Commerce. They may be used to finance Chamber-related functions, including surveys and/or promotions of benefit to all Members of the Chamber.
- d) Brokers will ensure that their Agents are knowledgeable of the objectives and principals of the ESP and will be responsible for the conduct of their Agents.
- e) Members agree, specifically, to seek the opinion of the Ethics and Resolutions Committee as a first step in resolving disputes with fellow members.

3.1.2 Real Estate Division Executive Committee

- a) The RED Executive Committee shall comprise of not less than 12 members and not more than 18 members.
- b) A quorum of a minimum of nine members of the Executive Committee is required for voting and ratification of issues raised in the Executive meetings. There will be only one vote per member brokerage which may be made by the Executive Member or their Alternate.
- c) Members of the Executive Committee may elect an alternate from their Brokerage firm to attend meetings on their behalf who may participate on discussion and who may vote on behalf of the Member. The alternate may also accompany the Member to Executive Committee meetings and may participate in discussion but in such case, only one attendee will be counted as to the quorum and vote.
- d) An Executive Member is expected to be an active contributor of the Executive Committee with a good attendance record. A good attendance record is understood to mean not absent from more than four RED Executive Committee meetings during the year.

3.2 **Executive Committee Chairperson, Deputy Chairperson and Past Chairperson**

The tenure for the Chairperson, Deputy Chairperson and Past Chairperson is two years unless as provided for under “Resignation or Removal of Office” section 3.2.4. The term may be no more than two years in consecutive terms.

A good attendance record is understood to mean not absent for more than four RED Executive Committee meetings during the year.

3.2.1 Chairperson(s) **Qualification:**

1. Having served as an immediate Deputy Chair or Co-Deputy Chairs.

2. In the event that an immediate Deputy Chair is unavailable a Member having served on the Executive Committee with a good attendance record, either as a Member or as an Alternate Member during the previous year. It is recommended that nomination of such a Member be initiated in advance of the year end.
3. The Chairperson position may be held by one such Member or by partnership of two such Members as Co-Chairs.
4. At the end of tenure as Chairperson, to act in a supportive role to the incoming Chairperson as a transitional period for a minimum of two Executive Committee meetings. The transitional period may be served by one or two outgoing Chairperson(s).

Chairperson(s)
Responsibilities:

5. Provide leadership to the Executive Committee.
6. Plan meeting Agendas and set objectives for the Executive Committee and the Sub-Committees for the year.
7. Preside over the RED Executive Committee meetings. In the absence of the Chairperson for a meeting, a Deputy Chair in the first instance will reside over the meeting. In the absence of a Deputy Chair, the Past Chair or any other Past Chair will conduct the meeting.
Meetings shall be conducted as follows:
 - a. Decide if Quorum is present (number of members present, not the voting number)
 - b. Approve the Agenda and Minutes
 - c. Call meeting to Order
 - d. Announce the Order of Business of the Agenda
 - e. Recognize members to have the floor
 - f. Enforce the rules of the Executive Committee
 - g. Put motions to a vote, following discussion of the issue
 - h. The Chairperson may exercise the right to vote only when the vote affects the results such as a “tie-vote” or may vote in the instance of a secret ballot
 - i. Adjourn the meeting
8. Appoint at the beginning of each year Chairperson for each sub-committee with consideration of recommendations from the previous Membership Sub Committee.
9. Follow up on matters presented to the Executive Committee or to the Chair(s) privately.
10. Review findings on any grievances presented by the Ethics and Resolutions Sub-Committee for recommendation of resolution.
11. Represent, communicate, report and be the spokesperson on behalf of the Real Estate Division Executive Committee when dealing with matters to do with the Bermuda Government, the Bermuda Chamber of Commerce and/or the Real Estate Industry in Bermuda.
12. Remain impartial and encourage fairness and inclusivity for all members of the Real Estate Division.
13. Prepare and deliver the Chairman’s report at the AGM.
14. Encourage Real Estate Industry firms that are not members to join the RED of the Bermuda Chamber of Commerce.
15. In a matter concerning a Chairperson, the Co-Chairperson would assume the Chair position to handle the specific matter. If a matter concerns both Co-Chairpersons, the Deputy Chair(s) will assume the position to handle the specific matter.

3.2.2 **Deputy Chair**
Qualification:

1. Prior to nomination as Deputy Chair a Member will have served on the Executive Committee with a good attendance record, either as a Member or as an Alternate Member during the previous year.
2. The Deputy Chair position may be held by one such Member or by partnership of two such Members as Co-Deputy Chairs.
3. At the end of tenure as Deputy Chair or Co-Deputy Chairs, the Member(s) will assume the Chair position. In the case of Co-Deputy Chairs the Members may both assume the Chair position as Co-Chairs or if by agreement only one Co-Deputy Chair will assume the Chairperson position.

Procedure for appointing the Deputy Chairperson

4. It is recommended that nominations of Deputy Chair position(s) be initiated in advance of the new term.
5. Any Executive Committee member may nominate a candidate or may volunteer for the Office of Deputy Chair, subject to the qualifications of the office.
6. A motion for nominations of Deputy Chair to be put forward to the Executive Committee for determination by majority vote. In the case of more than two nominees, the vote may be by secret ballot.
7. The successful nominee(s) shall assume the Chair or Co-Chair position.

Deputy Chair
Responsibilities:

To assume the position as under-study to the Chairperson(s) in preparation for the responsibilities and role of the Chair position.

8. Assist the Chairperson(s) in planning Agendas and setting objectives for the Executive Committee and Sub-Committees.
9. Assist the Chairperson(s) in running the Executive Committee meetings.
10. Assist the Chairperson(s) with follow-up on matters presented to the Executive Committee including research and preparation of reports.
11. Conduct Executive Committee meetings in the absence of the Chairperson(s).
12. In a matter concerning the Chairperson, a Deputy Chair would assume the Chair position to handle the specific matter.

3.2.3 **Past Chairperson**
Responsibilities, Qualification and Accession:

1. As outgoing Chairperson to serve as advisor to the incoming Chairperson unless as provided for under “Resignation or Removal of Office” section.
2. Conduct Executive Committee meetings in the absence of the Chairperson and a Deputy Chairperson.
3. A vacancy of the Past Chairperson to be filled by any past Chairperson who has continued to serve on the Executive Committee for the previous year.

3.2.4 **Resignation or Removal from Office of Deputy Chairperson, Chairperson, Past Chairperson**

1. A Chairperson, Deputy Chairperson or Past Chairperson may resign his/her office by written notice to the other two Chairpersons.
2. A Chairperson, Deputy Chairperson or Past Chairperson may, by written notice to the other Chairpersons, take a Leave of Absence due to personal or professional reason for a period of 3 months with no disqualification of re-instatement.
3. A minimum of three Executive Committee members, including any other Chair position, may propose the removal of any of the Chair positions. A determination by majority vote by the Executive Committee for the removal from office should be based on any of the following grounds:
 - (a) Such person has become permanently incapable of performing the functions of his office.
 - (b) Is no longer eligible to be a member of the Executive Committee.
 - (c) The entity which he represents is no longer eligible or ceases to be a member of the Chamber.
 - (d) There is evidence of illegal or immoral behaviour.
 - (e) Lack of performance of the duties of office.
4. The reasons for removal from office should be presented to the officer in question by advance written notice. Such officer shall be permitted to make representation of defense to the Executive Committee prior to determination by vote.

3.3 Sub-Committees

The Chairperson of the RED Executive Committee shall appoint the Sub-Committees and Sub-Committee Chairpersons at the beginning of each fiscal year to assist and to be of consultative value to the general membership of the Division. Sub-Committee members may be nominated from any Member of The Real Estate Division.

Sub-Committee Chairpersons are to submit to Secretary of The RED Division, the Chairperson and the Past Chairperson:

- (i) Sub-Committee Agenda for upcoming RED meetings no later than the Friday immediately preceding a meeting and;
- (ii) Sub-Committee Summary for insertion into the Minutes of the recent past meeting no later than the Friday immediately following a meeting.
- (iii) Conduct monthly meetings of the Sub-Committee.
- (iv) Establish and monitor goals of the sub-committee to be reported at Executive Committee meetings.
- (v) Submit the Sub-Committee's Newsletter as per the schedule.
- (vi) Submit year end summary reviewing goals and achievements and goals for the upcoming year.

Sub-committees should include, but not limited to the following content areas:

Education and Exam Review, Ethics and Resolution, The ESP, Government Communication, Legal and Banking, Membership and Nomination, Real Estate Advisory Board, Rentals **and**

3.3.1 Education and Exam Review sub-committee

The Education sub-committee will co-ordinate educational programs in conjunction with continued education requirements of the Real Estate Brokers' Licensing Act 2017 or any subsequent amendments or Acts. Additionally, the Education Committee will arrange speakers from time to time as the Board deems necessary on topical subjects for the membership. The Sub-committee will revise and update study material for the Real Estate Exam, revise and update the Real Estate License Exam as well as work on automating and computerizing the exam process.

3.3.2 Ethics and Resolution sub-committee

- a) The Ethics and Resolution sub-committee is empowered as a Resolution body to hear grievances or complaints with regards to infringement of any Law or of any standards, practices and ethics as herein determined which may arise within the industry between Members of the Division, or which may include any non-Members of The Division or as may be forthcoming from the public.
- b) The sub-committee will continue to review and make recommendations to the Real Estate Division, Executive Committee of such standards, practices and ethics in relation to their practical application within the industry.
- c) Complaints or grievances should be addressed to the Chairman of the Executive Committee of the Real Estate Division, which in turn, shall be passed on to the sub-committee for deliberation. It is strongly recommended, as a first resort, that this sub-committee of the Division, be addressed to deliberate on any dispute arising between Members of the Division, Members and non-Members and the public. This recommendation is in an effort to address disputes and grievances which may be resolved outside of a Court of Law and to preserve the reputation and integrity of the real estate industry. Issues arising between Broker/Agents should not be discussed with clients or customers or subject to public purview. There is no time limit between the occurrence of an event and that of the submission of complaint to the Ethics and Resolution sub-committee. It is at the discretion of the sub-committee to determine if the time lag between the event and the submission of the grievance is of such length as to be negated.
- d) If a Member is party to a dispute and is asked to present evidence in any grievance put forward to this sub-committee, that Member shall produce all pertinent facts to the Chairman of the sub-committee. Such information may be requested in a prescribed format provided by the sub-committee.
- e) The sub-committee, in the deliberation of grievances brought before them, will apply the standards, practices and ethics of the Real Estate Division ESP, The Real Estate Brokers' Licensing Act 2017, The Superintendent of Real Estate Statement of Principles and any other Act or Statement (and any amendments of the aforementioned) as applicable.
- f) The sub-committee will relay the findings of their deliberation to the Chairman of the Executive Committee.
- g) The sub-committee if satisfied that a Member has not conducted themselves in a manner that reflects the standards of practice as defined above may propose to the Executive of the Division:

- (i) recommendation as to an equitable settlement between the parties which may include distribution of commission issues;
 - (ii) , recommendation that the Executive of the Division exercise the Disciplinary Powers as outlined in Section 3.4
- h) Any grievance or complaint involving any sub-committee member, their firm or agent of the same firm or any other direct or indirect conflict of interest is determined, that sub-committee member must recuse themselves from the deliberation of the issue.

3.3.3 The ESP sub-committee

The ESP sub-committee will advise Division Members of existing standards and practices as outlined in the ESP. The sub-committee will review existing policies and suggested amendments to The ESP. This sub-committee will update the ESP with ratified amendments.

3.3.4 Government Communications sub-committee

The Government Communications sub-committee will liaise with Government or any other body on any matters pertaining to Government legislation and policies, changes of Acts and/or Regulations, as they may arise.

3.3.5 Legal and Banking sub-committee

The Legal and Banking sub-committee will liaise with the legal profession and the local banks regarding issues that affect the real estate industry. The Legal and Banking sub-committee will arrange speakers from time to time as the Board deems necessary on topical subjects for the membership.

3.3.6 Membership & Nominations sub-committee

- a) The Membership & Nominations sub-committee shall monitor General Membership as well as consider incoming applications for Membership. It is the responsibility of this sub-committee to ensure that all dues are up-to-date. The failure to pay dues within three months of the due date may result in the suspension of membership.
- b) It is the responsibility of this sub-committee to ensure that new Members are knowledgeable of the objectives and principles set out in the ESP and agree to guide their Agents accordingly.
- c) The sub-committee is also responsible for ensuring that a full slate of Officers of not less than 12 and not more than 18 Members including the Chairman, is proposed at any Annual General Meeting.

3.3.7 Real Estate Advisory Board sub-committee

The Real Estate Advisory Board sub-committee shall advocate for Real Estate industry representation on the Real Estate Advisory Board and be a professional consultative resource for the Superintendent on Real Estate matters.

3.3.8 Rentals sub-committee

The Rental sub-committee will review policy and fee structure with regards to Rentals and recommend changes to the ESP as necessary. The sub-committee will ensure that all Division Members are educated on existing policies and all matters relating to rental fee structure.

3.4 Disciplinary Powers

- 3.4.1 The Executive Committee of the Division, if satisfied that misconduct has been committed by a Member, may recommend to the Executive of the Chamber that the offender be:
- (a) provided with written warning; and/or
 - (b) suspended from membership; and/or
 - (c) recommended for expulsion from the membership of the Chamber of Commerce; and/or
 - (d) referred to the Superintendent of Real Estate or The Real Estate Advisory Board for further action.
- 3.4.2 The offender shall have the right of appeal to the Board of the Bermuda Chamber of Commerce, The Superintendent of Real Estate or The Real Estate Advisory Board.

3.5 Chamber of Commerce Dues and Finances

- 3.5.1 Specific projects may be paid for by vested interest groups such as the Real Estate Division of the Chamber.

4. Members' Code of Ethics and Conduct of Business

4.1 Relationship to the Client

- 4.1.1 In accepting a listing from a client the Broker/Agent is legally bound to protect and promote the interests of the client in connection therewith. This obligation of absolute fidelity to the client's interest is primary but it does not relieve the Broker/Agent from the obligation of dealing fairly with all parties to any given transaction.
- 4.1.2 Since the Brokerage is representing one party to a transaction, it shall not, and will not, accept compensation from more than one party without the full prior agreement of all parties to the said transaction.
- 4.1.3 No Broker/Agent shall purchase for himself, either directly or indirectly, real estate listed with him for sale, nor shall he acquire any interest therein, either directly or indirectly, until he has disclosed in writing to the Superintendent and to the client, complete details of his negotiations for the sale of the said property to any other person. Any Broker/Agent purchasing property on his own behalf or on behalf of any entity in which he has an interest must disclose his interest to the vendor prior to entering into any negotiations with him in respect of that property.
- 4.1.4 As a listing Broker in the management of any property, the Broker/Agent will not accept any commission, rebate or profits on expenditure made for a client, without the written knowledge and consent of the client.
- 4.1.5 In the event that more than one offer on a specific property is made before the client has executed a sales/rental agreement, any other offer presented to the Broker/Agent, whether directly by a prospect or through a Co-Brokerage must be transmitted to the client for decision.

- 4.1.6 In the event that any prospect has requested to be 'kept informed' on the potential sale of a property, with a view to allowing him to make a bid before it is sold, the client should be advised. The client's (vendor's / landlord's) guidance shall determine whether or not such prospect is contacted in the event of other offers being made.
- 4.1.7 The listing Brokerage may, if a client has withdrawn the listing, charge the client for related promotional expenses (e.g. advertising, long distance phone calls, etc), conditional upon this requirement being stated in the Brokerage Agreement.

4.2 Responsibility of Brokers and Agents

- 4.2.1 On acceptance of a listing the Brokerage automatically undertakes to represent the vendor, as does any Co-Broker of the listing. Where any Brokerage is instead attempting to represent the purchaser, he must declare his interest so to do in advance.
- 4.2.2 It is the duty of all licensed Brokers/Agents to protect the public against fraud or misrepresentation. Unethical practice in the real estate industry should be reported to the Chairman of the Executive Committee. Brokers and Agents should conduct their business at all times upholding the integrity of the real estate profession.
- 4.2.3 It is a responsibility of all Brokers to ensure that their licensed representatives are fully conversant with and adhere to the regulations contained in the Real Estate Brokers' Licensing Act 2017 or any subsequent amendments or Acts. In addition, the Broker is responsible for keeping their Agents informed of all aspects affecting the trading in real estate in the community in order to ensure that they are fully informed on matters of taxation, legislation, land use, planning regulations and other policies affecting trade in real property.
- 4.2.4 It is the duty of all Brokers and Agents to be well informed on current market conditions.
- 4.2.5 It is the Broker's responsibility to make sure that all files pertaining to the client's property are kept current at all times. This will include appropriate record keeping in satisfaction of AML/ATF requirements.
- 4.2.6 The Broker/Agent should ascertain all pertinent facts concerning every property, listed with them, so that the Brokerage may fulfill its obligations and avoid errors, exaggeration, misrepresentation, or concealment of pertinent facts. The Broker or Agent should advise his client that all boundaries and rights-of-way should be properly defined in order to avoid misunderstandings.

4.3 Relationship to Fellow Real Estate Agents

- 4.3.1 A Broker / Agent should seek no unfair advantage over fellow realtors and should willingly share with them the lessons of his experience and study. If any realtor should wish unbiased advice pertaining to any transaction he may contact any member of the Executive Committee of the Real Estate Division and said advice will be freely given.
- 4.3.2 In the event of a controversy between Members associated with different agencies arising out of their relationship as realtors, the members shall submit the dispute to the Chairman of the

Executive Committee in accordance with the regulations of the Bermuda Chamber of Commerce rather than litigate the matter.

4.3.3 A Broker / Agent should not disparage the business practices of a competitor, nor volunteer an opinion of a competitor's transaction. If his opinion is sought, it should be rendered with strict professional ethics and integrity.

4.3.4 Co-Broker Activities

- a) An entire Brokerage is bound by a Co-Broker Agreement whether considered automatic or signed by any licensed representative of the Co-Broker agency and shall be binding for the entire Co-Broker agency.
- b) A Co-broker should not invite the cooperation of a third Brokerage without the consent in writing of the Listing Broker.
- c) Distribution of Co-Broker Agreements in advance of a signed Listing Agreement is fraudulent. A Co-Broker Agreement which pre-dates a valid Listing Agreement will be considered null and void.
- d) Solicitation of clients and customers introduced by another ~~firm~~ agency is unethical.
- e) Where the Co-Broker submits an offer for sale or rent in writing to a Listing Broker, the Listing Broker is required to acknowledge submission to the vendor or landlord.
- f) Once advertised (by any media that is available to the public), without exception, a property must be co-brokered upon request to other Members unless otherwise instructed in writing by the client; such instructions are to be made available upon enquiry.
- g) Co-Broker will not advertise, by any media, any other Broker's Listing without written approval of the Listing Brokerage.

4.3.5 A Co-Broker must not, under any circumstances, contact the Listing Broker's client directly:

- a) It will be deemed unethical for a Co-Broker to contact a vendor / ~~landlord~~ seeking a direct listing for a property during the term of a Listing Broker's listing, on which he has accepted a co-broke.
- b) A Co-Broker must not contact the vendor to enquire when the listing realtor's listing expires.
- c) A Co-Broker must not contact the vendor to arrange showings or provide feedback. A Co-Broker must only show a co-broke property by prior appointment via the Listing Broker and all communications with the vendor must be through the Listing Broker.
- d) If the vendor contacts the Co-Broker directly and without solicitation to do so, the Co-Broker may accept a direct listing, but should request that the vendor advise the Listing Broker personally of that change in the status of the property. The Brokerage accepting a direct listing under these circumstances should also advise and terminate the initial co-broke agreement.
- e) Communication offering a co-broke on a property to another Brokerage is subject to these protections if it can be demonstrated that the recipient of the call did not have previous knowledge of the availability of the property.

- f) It is recommended that the Listing Broker should apprise the Co-Broker on all matters pertaining to negotiation and contract.
- a) Termination of co-broke by a Co-Broker:
 - (i) The recipient of a co-broke may terminate that arrangement by notice in writing if the Listing Broker fails to provide timely service and information on the property. Either Brokerage may be called before the Ethics and Resolution sub-committee to justify their action.
 - (ii) A co-broke is deemed to remain in effect if the Co-Broker has received a direct listing as a result of having breached the terms of the co-broke.

4.4 Introduction of Property

The following definition is for the purpose of resolving any conflict that may arise as between two or more realtors who have introduced a particular prospect to the same property.

- 4.4.1 On the subject of securing an introduction via the client, listing realtors are advised to include clear and unambiguous wording in their listing agreements to ensure their entitlement to commission on all sales and rentals resulting from their introductions.
- 4.4.2. The following ethical prescription is for the purpose of resolving any dispute between competing realtors:-

If a realtor is informed by, or in relation to, a prospect that such prospect may have interest in a property which he has previously seen or plans to see with another realtor, the realtor so informed is advised to recommend that the interest be pursued via the realtor who originally introduced it.
- 4.4.3 For the purpose of determining the introducing agent's eligibility for commission: The "Introduction" of a prospect and an Offer in good faith negotiations **must occur** during the valid listing period of the Listing Agent to qualify for commission.

4.5 Advertising

- 4.5.1 Members are reminded that it is in the vendor's interest to market a property to the widest possible audience. They should not withhold a property from the market or fellow agents in order to show it to their own prospects first. Member listing Brokerages are obliged to co-broke with the other members once they have advertised a property through print and/or voice media, internet and signage. Furthermore, it is understood that the listing Brokerage will then arrange a viewing at the earliest possible opportunity as agreed between agents.
- 4.5.2 All advertising is to be at gross prices.

When a client indicates that his asking price is a "net" price, the realtor should, for the purpose of advertising and general dissemination of information about the property, determine a correct gross price. The standard procedure for calculating a gross price is to divide the net price by .95 (95%) to allow for inclusion of the agency commission and then round the resulting figure up. The

resulting price should be agreed with the client to ensure that all agencies representing the property do so on the same basis.

- 4.5.3 All members agree to put either the Chamber of Commerce's logo or state that they are Chamber members in their block ads. All print ads must list the Brokerage licensed name.

4.6 Forms of Contracts

4.6.1 Sales Listing Agreements

It is the intention of the Real Estate Division of the Chamber of Commerce to introduce standardized requirements for Brokerage Agreements for the use of all Member firms. The following guidelines should be adhered to until such time as that document is provided.

- a) The document which establishes a listing should be correctly identified as a Listing Agreement.
- b) A Brokerage must not offer property for sale or rent until instructed to do so in writing or by a signed Listing Agreement with the client.
- c) Listing Agreements may be cancelled/amended by the client or Agent in accordance with the contractual terms of the listing.
- d) A Brokerage accepting a sole listing which will supplant existing open listings should notify those Brokers whose listings are to be terminated.
- e) A Sole Listing is defined as a property which is listed with only one Brokerage. The sole listing Brokerage is entitled to full commission if the property is sold or rented by the sole listing Brokerage or by the client directly, as dictated by the Listing Agreement. In the case of a co-brokerage transaction, the sole Listing Broker shall share the commission with the Co-Broker, as dictated by the Co-Brokerage Agreement and in accordance with the Commissions and Fees structure stated in this ESP.
- f) Open Listings represent property offered for sale or rent listed with more than one Brokerage. The Brokerage who effects the sale or rental is entitled to the full commission. In the case of a co-brokerage transaction, the Listing Broker shall share the commission with the Co-Broker, as dictated by the Co-Brokerage Agreement and in accordance with the Commissions and Fees structure stated in this ESP.
- g) Listing Agreements should include:
 - Description of the property
 - The client's name(s) including beneficial owners
 - Specify a gross asking price. All listings must be taken and co-broked at a gross asking price. It is recommended that where the listing price is given the phrase "or at a negotiated price accepted by the Vendor" follows.
 - Specify whether the listing is Open or Sole with definition of each and include a date of expiry (midnight of that date implied for both Open and Sole listings)
 - Disclose the 5% commission payable as recommended by the Real Estate Division of the Bermuda Chamber of Commerce. Or 4% in the case of bank repossessed properties. A Listing Agreement that does not specify 'consideration' for services rendered is not valid.

- Signatures by the Brokerage and by all parties of ownership (vendor, legal representative, trustee).
- State a Brokerage's entitlement to a commission in the event of a purchaser or vendor default.
- If the Brokerage intends to charge the client for costs incurred in the event of withdrawal of the listing, sale by the client, or any other circumstance, this should be clarified in the Listing Agreement.
- There should be text somewhere in the body of the Listing Agreement to the effect that a duplicate copy has been provided for the client to keep in his files.
- Authorization by the client for advertising of the property should be clearly indicated in the Listing Agreement.
- The client's instructions on co-brokerage should be obtained; the client should be advised that co-brokerage is sanctioned by the Real Estate Division of the Chamber of Commerce.
- The following is not assumed and must be stated and agreed on a Listing Agreement between the Brokerage and the Vendor:-
The Listing Agent shall be eligible for full commission in the event that a prospect, introduced to the Property by the Listing Agent (or their co-broke agent), purchases directly from the Vendor at any time during the Listing Agreement term or within 180 days subsequent to the Expiration Date of the Listing.
- Advise Vendors to have boundary survey in advance of marketing and viewings.
- Listing Agreements are to be stamped in accordance with the Stamp Duties Act 1976 no later than thirty days from the date of the Agreement.

4.6.2 Sales and Purchase Agreements:

It is recommended that Members should use or refer to the standard Sales and Purchase Agreement as provided by the Bermuda Bar Association.

4.6.3 Rental Lease Agreements

It is recommended that:

- a) Residential Rentals, either Long-Term or Short-Term require a written Lease Agreement, giving full details of the terms and conditions of the agreed tenancy.
- b) The Agreement must be executed by both respective parties and duly stamped. The correct stamps affixed to be in accordance with the current laws in Bermuda as determined by the Bermuda Government Stamp Duties Act 1976 or any amendments thereto. To avoid any doubt, in accordance with the Stamp Duties Act any 'renewal of a lease or agreement for a lease or extension of lease' is the same rate as for 'a lease and agreement for a lease'. This also includes Options terms for any renewal of leases.
- c) Rental leases must state that rental properties which fall within Rent Control are subject to the Rent Increase (Domestic Premises) Control Act 1971 or any amendments thereto.
- d) A deposit may be required by the landlord and may be utilized to cover breakages, damage, cleaning bills or any other payments including recovery for loss of rents in accordance with the terms and conditions of the Lease Agreement.
- e) Any deposit held by a Brokerage must be held in a separate escrow by the brokerage.

- f) A deposit the equivalent of one (1) month's rent is suggested for all properties other than those which come under Clause 27 (2) of the Rent Increases (Domestic Premises) Control Act 1978 or any amendment thereto; a deposit for those properties under "Rent Control" may not exceed one half of one month's rent.
- g) The deposit is to be refunded at the termination of tenancy, subject to the deduction of any expenses occasioned to the landlord by the failure of the tenant to comply with any conditions of the tenancy, which is the duty of the tenant to comply with and the manner in which any such deduction is calculated is clearly specified.
- h) If the tenant is a non-Bermudian in Bermuda under contract/work permit and such contract/work permit is terminated and he is ordered by his employers or the Government of Bermuda to move away from Bermuda, or he is compelled to leave Bermuda by ill health then the tenant may terminate the tenancy hereby created by giving to the landlord or the agent no greater than three (3) calendar months' notice to quit upon furnishing the landlord or the agent with satisfactory proof of the termination of his contract/work permit, or of his orders to move away from Bermuda, or medical evidence giving cause for him to leave Bermuda. Such notice period to quit may be reduced with the consent of the landlord.
- i) Division Members' leases should specify that disputes are to be settled by arbitration within the meaning of the Arbitration Act 1986. Arbitration by the Ethics and Resolution sub-Committee of the Real Estate Division of the Bermuda Chamber of Commerce is recommended.
- j) It is recommended that a clause be included whether permission for a car may be registered to the property.
- k) It is recommended and is at the discretion of the Brokerage to include in Rental Listing Agreements the entitlement of commission if tenant subsequently purchases the property. Suggested clause "In the event that the tenant, introduced and placed on the property by this Brokerage (or through a co-broker), who subsequently purchases the rental property during the initial lease period and any renewal lease period, this Brokerage is entitled to a sale commission from the Landlord/Vendor. This entitlement shall survive no longer than three (3) years from the commencement date of the lease. The commission will be 2.5% of the purchase price of the property sale."

4.6.4 Co-Broker Agreements:

(also refer to sections 4.3.4 and 4.3.5)

4.6.4.1 Sales Co-Broker Agreements

- a) A Sales Co-Broke Agreement has been standardized for the use by all Division Members of The Chamber of Commerce. The standardized Co-Broker Agreement states the directives and obligations of the Co-Broker including Introduction, Commission, Contact with Vendor, Advertising, Fiduciary Duty and Customer Due Diligence. Refer to Appendix I.
- b) The standardized Sales Co-Broke Agreement shall be considered automatic between Members of the Real Estate Division and shall be binding for the entire Co-Broker agency.

- c) Any unusual matters such as reduced commission must be disclosed to the Co-Broker immediately.
- d) The Sales Co-Broke Agreement may be signed and lodged with the Listing Broker at any time but must be lodged upon the prospect entering a Sales and Purchase Agreement.
- e) It is recommended that a Sales Co-Broke Agreement be signed and lodged when working with non-Member Brokers / Agents.

4.6.4.2 Rental Co-Broke Agreements

- a) A Rental Co-Broker Agreement may be considered automatic between Members of the Real Estate Division of The Chamber of Commerce and shall be binding for the entire Co-Broker agency.
- b) The Rental Co-Broke Agreement may be signed and lodged with the Listing Broker at any time but must be lodged upon the prospect entering a Lease Agreement.
- c) Any unusual matters such as reduced commission must be disclosed to the Co-Broker immediately.
- d) It is recommended that Rental Co-Broke Agreements be made between Member and non-Member Brokers/Agents in order to clarify all matters concerning the property and to ensure entitlement to commission.
- e) Details on a Rental Co-Broke Agreement should include:
 - Name of Listing Broker and Co-Broker
 - Description and Address of the property
 - Disclose whether managed or Finders Fee
 - Confirm Co-Brokerage fee is one-half of the total commission
 - Confirm the Rental Deposit amount
 - Confirm availability dates
 - Confirm AML Due Diligence by all Brokerages
 - Rental Co-Broke Agreements may include a clause that in the event that a tenant, introduced by the Co-Broker Agent, subsequently purchases the Property during the initial rental term and any initial renewal term to a maximum of three years (length of term to be ratified), subject to eligibility of a commission of sale having been agreed in the Rental Listing Agreement, 50% of the sale commission is payable to the Co-Broker Agent.

4.7 Buyers' Agency

- a) A Brokerage acting in a fiduciary relationship with, and exclusively representing, a prospective purchaser by contract and fee arrangement in a real estate transaction.
- b) A Brokerage acting in the capacity of a Buyer's Agency is required to disclose this relationship to the listing realtor, who in turn must inform the vendor in advance of making an introduction of a property to the prospective buyer and in advance of entering into any negotiations.
- c) With respect to co-broke properties, the Buyer's Agency shall not be entitled to a co-broke commission without the full agreement of all parties to the said transaction.

4.8 Real Estate Appraisals/Opinions of Value

A licensed realtor, who is not qualified as a Certified Valuer, may prepare an Opinion of Value for a client with the disclaimer that the report is based on market experience and does not qualify as a Certified Valuation. A realtor should not render an opinion of value on any property where he has a present or contemplated interest unless such interest is specifically disclosed in the appraisal report. It is recommended that any value of real property for the purposes of a court of law, probate or financing should be performed by a Certified Valuer who is registered in Bermuda.

4.9 National Association of Realtors (NAR)

- a) The Bermuda Chamber of Commerce Real Estate Division has a Bilateral Cooperation Agreement with the National Association of Realtors for membership. Individual Brokers and Agents can apply for membership of NAR as International Realtor Members (IRM). As a valid and fully paid member of NAR, Brokers and Agents may use and display the “REALTOR” and IRM designations.
- b) The Executive Sub-Committees will refer to the guidelines of NAR as they pertain to the respective Sub-Committees’ mandates.

5. Commission and Fees

5.1 Sales

5.1.1 Commission is payable to a Brokerage effecting a sale and shall be 5% of the consideration or 4% for bank reposessed properties.

5.1.2 Commission between two co-broking members is to be shared equally with the exception of Fractional Sales.

5.1.3 Commission payable to a Fractional Listing Agent on the re-sale of a Fractional unit shall be 10% of the sales price, effective 1st March 2018.

Co-broke Commission is payable to a co-broking Broker (Referring Broker) for the referral of purchasers or vendors to the Fractional Listing Broker at 25% of total commission (ie: 2.5% of the sales price).

5.2 Residential Rentals

5.2.1 FINDERS FEE (6 months plus 1 day or more)

- a) Finder’s Fee is defined as the placement of a tenant for a lease period of 6 months plus 1 day or more.
- b) The Finder’s Fee is equal to one (1) month’s rent. Full fee is payable upon commencement of lease.
- c) Fees are not subject to pro-rata refund in the event tenancy is terminated early.
- d) Finder’s Fee is not payable on the renewal of the lease or subsequent terms of the lease.

5.2.2 PROPERTY MANAGEMENT FEE (6 months plus 1 day or more)

- a) Property Management is defined as the administration of a rental property for a lease period of 6 months plus 1 day or more, which includes maintenance, collection of rents and other duties as outlined in the management agreement.
- b) The fee for managing a rental property can be structured in one of two ways:-
- c) Management Fee:- 10% of the monthly rental amount payable monthly for the duration of the lease. This fee includes tenant placement.

OR

- d) Management Fee:- 7.5% of the monthly rental amount payable monthly for the duration of the lease. Plus a tenant placement fee of one (1) months rent (payable at commencement of lease).

5.2.3 SHORT TERM and VACATION RENTAL FEE (6 months or less)

- a) Short Term and Vacation Rentals are defined as any tenancy for a rental property of a lease period of 6 months or less, either under Finders Fee or Property Management Agreement.
- b) The fee for securing a rental tenancy of 6 months or less is 15% of the total rental return for the period of the booking term (payable upon commencement of lease or booking agreement).
- c) Fees are not subject to pro-rata refund in the event tenancy is terminated early.

5.2.4 RENTAL ADDITIONAL FEES (may apply by agreement)

- a) **Project Management Fee –**
Fees may be charged for the management of specific, non-routine projects of a larger scale or project costs above an agreed amount.
- b) **Management of non-tenanted property-**
Fees may be charged for the management or overseeing of maintenance issues of a property during a period of non-tenancy.
- c) **Lease Renewal Fee –**
Fees may be charged for administration in the case of renewal of a lease.
- d) **Stamp Duty –**
Lease renewals and Addendums are subject to Stamp Duty in accordance with the Stamps Duties Act 1976 or any amendments thereto.

5.2.5 RENTAL CO-BROKER FEES

- a) Co-Broker fees to be 50% of the fee received by the Listing Broker payable to the Co-Broker.

- b) For managed residential properties, the Co-Broker fee is payable at 50% of one (1) month's rent regardless of the Listing Broker's specific management agreement except when stated in advance by the Listing Agent to the Co-Broker Agent that no Co-Broker Fees will be payable for tenant placement of the managed property.
- c) Co-Broker fees to be payable within 10 working days from the commencement of the lease or booking agreement.
- d) In the event that a tenant, introduced by the Co-Broking Agent, subsequently purchases the Property during the initial rental term or any initial renewal term and, subject to eligibility of a commission of sale having been agreed in the Rental Listing Agreement, a Co-Broker fee of 50% of the sale commission is payable to the Co-Broking Agent.

5.3 Commercial Rentals

5.3.1 FINDERS FEE COMMERCIAL

- a) The Finders Fee for a lease period of **6 months plus 1 day or more** up to a five (5) year lease term is equal to one (1) month's rent
- b) The Finders Fee for lease period of **6 months or less** is equal to one-half month's rent.
- c) Full fee is payable upon commencement of lease.
- d) Fees are not subject to pro-rata refund in the event tenancy is terminated early.
- e) Finders' Fee on every five (5) year term renewal of the lease is equal to one (1) month's rent payable upon commencement of renewal term.

5.3.2 MANAGED COMMERCIAL

- a) Management Fee of commercial rentals (inclusive of office buildings and condominium complexes) may be structured and negotiated based on the services provided. Building service charges are not commissionable.
- b) A tenant placement fee may be applied in addition to management fees and may be negotiated based on volume of tenancy placements.

5.3.3 COMMERCIAL CO-BROKE

For commercial properties, either managed or finders' fee, to be 50% of the fee received by the Listing Broker or as otherwise confirmed in advance by the Listing Broker.

6. Division Meetings

6.1 ANNUAL GENERAL MEETING

The officers of each Division shall summon a meeting of the members of the Division (to be known as a Divisional Annual General Meeting), to be held in December of each year or in January of the following year for the purpose of-

- a) Presentation of the Chairperson's Report
- b) Electing the officers of the Division for the following year; and
- c) Conducting any other business which the Division officers consider proper and relevant.

6.1.1 a) Any member of a Division may petition the Board to summon a Divisional Annual General Meeting, such summons to fall within 60 days of such petition.

b) Failure by a Division to summon and/or conduct a Divisional Annual General Meeting shall not invalidate the appointment or actions of the Division.

6.1.2 Quorum of Divisional Annual General Meeting – shall be twice the number of Executive Committee members

6.2 SPECIAL GENERAL MEETINGS

- a) Any general meeting of a Division, other than its Annual General Meeting, shall be a Special General Meeting.
- b) Any Division officer or the Board may, whenever it thinks fit, convene a Special General Meeting of the Division.

7. Laws, Customary Practices

7.1 Rights of Parties

Rights of Parties as set out by the Bermuda Bar Association 25th June, 1981:

7.1.1 Each party to a real estate transaction is entitled to instruct separate and independent legal representation;

7.1.2 A purchaser is entitled to select the attorneys to draw the indenture of conveyance;

7.1.3 A mortgagee is entitled to select the attorneys to draw the indenture of mortgage;

7.1.4 A vendor and a mortgagor are entitled to instruct separate and independent legal representation to advise them and to vet the documents prepared by the attorneys of the other party;

7.1.5 Where a transaction involves both a conveyance and a mortgage, the attorneys who prepare the said indenture of conveyance need not also prepare the indenture of mortgage, and vice versa;

7.1.6 In a transaction involving both a conveyance and a mortgage the realtor and lending institution should in no event attempt to influence the selection of the attorneys to draw the conveyance and in all cases should ask a purchaser which attorneys he or she wishes to draw the conveyance and comply with those wishes. It would be inappropriate realtors or lending institutions to instruct purchasers in the choice of attorneys to be used in the preparation of documents, etc.;

7.1.7 All Real Estate Brokerage firms must conform to the Real Estate Brokers' Licensing Act 2017 and any subsequent amendments thereto when advertising;

7.1.8 The realtor, for the protection of all parties, should ensure financial obligations and commitments regarding all real estate transactions are in writing, expressing the exact agreement of all parties, and that copies of such agreements are delivered to all parties involved at the time of execution.

7.2 Arbitration

Any controversy or claim arising out of or relating to an Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules (Expedited Form) of the Bermuda Mediation & Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any Court having jurisdiction thereof.

7.3 Compliance

The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (the SEA Act) designated the Superintendent of Real Estate (Superintendent) as being the supervisory authority responsible for ensuring that real estate brokers and real estate agents comply with the relevant AML/ATF Acts and Regulations. The Regulations will apply to real estate brokers and real estate agents who are licensed by the Superintendent to trade in real estate pursuant to the Act.

Requirements for Licensing include:

- a) Policy and Procedures inherent to each Brokerage
- b) Annual AML Independent Audit Report for each Brokerage
- c) Annual Financial Audit for each Brokerage
- d) Annual Statistical Report for each Brokerage
- e) Criminal Background check
- f) Fit and Proper Questionnaire for each Licensee submitted once unless there is any material change or if there is a change of the Reporting or Compliance Officer of the Brokerage.

8. Brokers' Acceptance Ethics and Standards Practices

As a Member of the Real Estate Division of The Bermuda Chamber of Commerce, payment of annual fees indicates that each Real Estate Member Firm agrees to abide by the guidelines of The Bermuda Chamber of Commerce Real Estate Division's Ethics and Standards Practices "ESP" and the Laws of Bermuda, and will ensure that the Member Firm's Agents are knowledgeable of and will abide the guideline

SALES CO-BROKE AGREEMENT

NAME AND ADDRESS OF PROPERTY: _____

PRICE: \$ _____

LISTING BROKER NAME: _____

LISTING AGENT NAME: _____

CO-BROKER NAME: _____ Attn: _____
(agent's name)

SIGNED LISTING AGREEMENT:

The Listing Broker represents that they possess a valid signed listing agreement for this property and are authorized to appoint Co-Brokers.

CUSTOMER DUE DILIGENCE:

The Listing Broker affirms that all due diligence checks on the client will be conducted before the transaction is completed and the CDD information will be made available upon request, in accordance with the Listing Broker's AML/ATF Policies and Procedures,

THE CO-BROKER ACCEPTS AND AGREES THE FOLLOWING:

Introduction of Property to Purchaser:

Should the Co-Broker introduce a purchaser who completes the purchase of the property and a commission is paid to the Listing Broker, 50% of that commission will be paid to the Co-Broker.

Commission:

If the commission differs from the 5% as stated in The Bermuda Chamber of Commerce Real Estate ESP, then the Co-Broker will be informed in writing prior to drafting the SPA.

Contact with Vendor:

The Co-Broker will not contact the Vendor directly in connection to this property and all appointments will be made through the Listing Broker.

Advertising:

The Co-Broker shall not advertise or distribute unsolicited information on this property, unless otherwise authorized. With regards to the relevance of the Listing to a prospect's criteria, the Co-Broker may submit links or flyers to such a prospect acknowledging cooperation of the Listing Agent.

Fiduciary Duty:

The Co-broker understands that the Vendor is the client.

CUSTOMER DUE DILIGENCE:

The Co-Broker affirms that all due diligence checks on the purchaser will be conducted before the transaction is completed and the CDD information will be made available upon request, in accordance with the Co-Broker's AML/ATF Policies and Procedures.

____ **SOLE LISTING CO-BROKE:** A signed copy of this agreement must be lodged with the Listing Broker upon entering a Sales & Purchase Agreement.

____ **OPEN LISTING CO-BROKE:** A signed copy of this agreement must be lodged with the Listing Broker upon entering a Sales & Purchase Agreement.

Signed on behalf of Co-Broker:

Date:

Signed on behalf of Listing Broker:

Date:

Listing Broker to specify details of property – ARV, Land Tax, Assessment #, Zoning, Description
Revised Mar 2023