



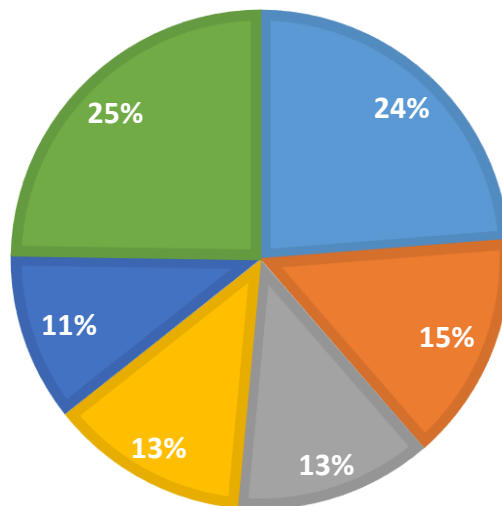
# LEGAL TIP OF THE WEEK

In last weeks LEGAL TIP, we took a look at the most violated state statutes, and examples of how licensees failed to uphold the law. This week, we take a closer look at the most violated administration rules and address an upcoming **change to the continuing education requirements for ALL LICENSEES**.

What is an “**administrative rules**?” Administrative rules are officially promulgated agency regulations that have the force and effect of law. Generally these rules elaborate the requirements of a law or policy. Each state has its own set of administrative rules which are passed by the state legislature.

## MOST VIOLATED ADMINISTRATIVE RULES

■ R162-2f-401a(1) ■ R162-2f-401a(2) ■ R162-2f-401a(6)  
■ R162-2f-401b(1) ■ R162-2f-401b(15) ■ R162-2f-401h(1)



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## R162-2f-401 AFFIRMATIVE DUTIES REQUIRED OF ALL LICENSEES

### R162-2F401a

#### An individual licensee shall:

- (1) Uphold the following fiduciary duties in the course of representing a principal:
  - a) Loyalty, which obligates the agent to place the best interests of the principal above all other interests, including the agent's own;
  - b) Obedience, which obligates the agent to obey all lawful instructions from the principal;
  - c) Full disclosure, which obligates the agent to inform the principal of any material fact the agent learns about:
    - i. The other party; or
    - ii. The transaction;
  - d) Confidentiality, which prohibits the agent from disclosing, without permission, any information given to the agent by the principal that would likely weaken the principal's bargaining position if it were known, but excepting any known material fact concerning:
    - i. A defect in the property; or
    - ii. The client's ability to perform on the contract;
  - e) Reasonable care and diligence;
  - f) Holding safe and accounting for all money or property entrusted to the agent; and
  - g) Any additional duties created by the agency agreement;

Respondent (agent) and sellers executed an Exclusive Right to Sell Listing Agreement. Respondent listed the Seller's property on the MLS. Under the phrase "Short Sale" on the listing, Respondent noted that the price was subject to 3<sup>rd</sup> party approval. Approx. one month later the parties discussed and agreed that the Respondent could lease the property from the Sellers until the property either sold or was foreclosed on. Respondent paid a one-time fee of \$1000 for the ability to lease the property. Respondent sent a rental agreement to the Sellers, but the Sellers changed their mind and decided not to sign. Soon after, the Respondent, without obtaining the Sellers' authorization, changed the MLS listing to reflect, "withdrawn unconditionally." Two weeks later, Respondent, without the Seller's permission, subleased the Seller's property to an acquaintance. Respondent was charging the subtenant monthly rent of \$800. The subtenant resided in the property for six weeks. Respondent did not properly account for rental payments, deposits, repairs and utility payments. The Sellers complained to the Respondent about the tenant and about the modified MLS listing. Two weeks later, the Respondent, without a new listing agreement, relisted the property, under a new listing which contained language not found in the first listing. The new language included the remarks: "Offer under 3<sup>rd</sup> party review" and "no showings at this time." The listing status was "Active." Two months later, the property was surrendered to the lender and the MLS listing status was changed to "Withdrawn Unconditionally."

- (2) For the purpose of defining the scope of the individual's agency, execute a written agency agreement between the individual and the individual's principal, including:
  - a) Seller(s) the individual represents;
  - b) Buyer(s) the individual represents;
  - c) Buyer(s) and seller(S) the individual represents as a limited agent in the same transaction pursuant to this Subsection (4);
  - d) The owner of a property for which the individual will provide property management services; and
  - e) A tenant whom the individual represents;

There are lots of examples of this with limited agency, buyer representation or seller representation.

## An individual licensee shall (continued):

### R162-2F401a

(6) Prior to executing a binding agreement, disclose in writing to clients, agents for other parties, and unrepresented parties:

- a) The licensee's position as a principal in any transaction where the licensee operates either directly or indirectly to buy, sell, lease or rent real property;
- b) The fact that the licensee holds a license with the division, whether the license status is active or inactive, in any circumstance where the licensee is a principal in an agreement to buy, sell, lease or rent real property;
- c) The licensee's agency relationship(s);
  - i. The existence or possible existence of a due-on-sale clause in an underlying encumbrance on real property; and
  - ii. The potential consequences of selling or purchasing a property without obtaining the authorization of the holder of an underlying encumbrance;

(Ex #1) Respondent (agent) was an associate broker. Respondent was a manager and employee of an LLC that owned real property. Respondent on behalf of his brokerage, entered into an Exclusive Right to Sell Listing Agreement with the LLC. The LLC entered into a REPC with buyers for the purchase of the property. Respondent did not disclose in writing to the Buyers' agent, either before or after execution of the first REPC, the Respondent's position as a principal in the transaction. The first REPC was cancelled and the LLC entered into a subsequent REPC with Buyers. Again, Respondent did not disclose before or after the execution of the second REPC Respondent's position as a principal in the transaction.

(Ex #2) Respondent listed a property for sale. The owner on record was an L.C. and Respondent was the member/manager of this company and sole shareholder. Respondent failed to disclose he was an owner-agent or that he had an interest in the property.

### R162-2F401b

#### An individual licensee may NOT:

(1) Engage in any of the practices described in Section 61-2f-401 et seq., whether acting as agent or on the licensee's own account, in a manner that:

- a) Fails to conform with accepted standards of the real estate sales, leasing or management industries;
- b) Could jeopardize the public health, safety or welfare; or
- c) Violates any provision of Title 61, Chapter 2f et seq. or the rules of this chapter;

(Ex #1) Principal Broker, while showing a property to a potential buyer took an alcoholic beverage from the refrigerator and consumed it.

(Ex #2) Respondent (agent) owned an LLC and was interested in purchasing a property. The Seller disclosed several unrepaired cracks in the foundation through which water had previously led into the basement. Respondent submitted an offer on the property below asking price, due, in part, to the anticipated cost of repairing the foundation leaks. Respondent had a complete home inspection done on the property. The final inspection report noted "owner disclosed flooding," stains on walls, foundation appears to be serviceable, moisture near cracks, recommended cracks be evaluated and repaired by a licensed contractor, and possible mold in the basement closet. Respondent completed the purchase of the property and completed a full remodel. Respondent relisted the property.

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## An individual licensee shall NOT(continued):

Prior to closing, the buyer cancelled the contract due to problems discovered with the home's main sewer line. The property went under contract with a new buyer. Respondent provided the buyer a Seller's Property Condition Disclosure. Respondent did not disclose the visible mold in the basement when the buyer purchased the property. In response to any past or present water leakage, respondent said "yes" with the explanation of "we added back rain gutter, sealed cement, and that fixed the problem." In fact, Respondent had not sealed the cement. Respondent did not disclose the existence of foundation cracks or the potential problems with the home's sewer connection. Soon after the home closing, the basement flooded due to water leaking through unsealed cracks and the sewer backed up into the home resulting in approximately \$30,000 in damage.

(15) Act or attempt to act as a limited agent in any transaction in which:

- a) The licensee is a principal in the transaction; or
- b) Any entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal in the transaction;

Respondent is a Principal Broker and listed three vacant lots on the MLS without obtaining written permission from the seller. Respondent also failed to execute a written agency agreement with the seller. Respondent, acting on behalf of a company he solely owned, submitted an offer to purchase the three vacant lots, making Respondent a principal in the transaction. This offer was presented to the seller and ratified the same day. Respondent represented to the seller he had collected \$3000 Earnest Money to be deposited into the brokerage Trust Account within four calendar days. This earnest money was never collected and was not reflected on the HUD-1 Settlement Statement.

## R162-2F401h

### Requirements and Restrictions in Advertising:

(1) Except as provided for in subsections (2) and (3), a licensee shall not advertise or permit any person employed by or affiliated with the licensee to advertise real estate services or property in any medium without clearly and conspicuously identifying in the advertisement the name of the brokerage with which the licensee is affiliated.

Common examples are when teams advertise their "team name" and omit their brokerage name. Team name CAN be used, but brokerage name must still be displayed.

## NEW MANDATORY CE COURSE *Required of All Licensees*

Active real estate licensees will continue to be required to complete a total of 18 hours of continuing education to renew their license. As is currently required, a minimum of 9 of the 18 hours must be Core Topic Courses. However, **commencing in January 2020, 3 of the 9 required Core Topic Course hours must be satisfied by completing the Mandatory 3-Hour Real Estate Commission Approved Course.**

The Mandatory 3-Hour Course will be available for licensees to complete no later than July of 2019. This course will address **current** (meaning it will change every two years) topics of industry concern, areas of confusion, common misconceptions, disciplinary actions and how to avoid them, etc. It will be formatted much like the annual Division Caravan courses.

The Association Office will make certain to schedule instructors for this course (when available) on a regular basis at the Association Office for the convenience of our members.