

Document: Proposed Rule

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**TITLE 876 INDIANA REAL ESTATE
COMMISSION**

Proposed Rule
LSA Document #00-260

DIGEST

Amends 876 IAC 1-1-3 to revise and update the definition of selling principal broker. Amends 876 IAC 1-1-23 to require a mutual release or court order to authorize a listing and selling principal broker to release earnest money. Amends 876 IAC 1-1-24 to extend requirements that apply to listing principal brokers in closings to selling principal brokers. Amends 876 IAC 1-1-26 to add Internet advertising to the advertising requirements. Amends 876 IAC 2-17-3 to divide the real estate broker and salesperson examination into two sections and to require that applicants pass both sections and to require applicants for licensure as a broker or salesperson by reciprocity to pass the Indiana licensure law section of the examination. Amends 876 IAC 4-1-3 to allow individuals once approved to instruct for continuing education sponsors to teach for other sponsors without further approval. Amends 876 IAC 4-2-1 to require licensees to present photo identification and broker or salesperson pocket card for admission to a continuing education course. Amends 876 IAC 4-2-4 to change the course subjects allowed satisfying the ten hour continuing education requirements under IC 25-34.1-9-11(2). Amends 4-2-5 to eliminate mechanical skills as a course that does not qualify as instructional or contributing to professional competency. Amends 876 IAC 4-2-9 to require licensees to obtain 16 hours of continuing education to reactivate an inactive license during a two year licensure period. Partially effective 30 days after filing with the secretary of state and partially effective October 1, 2001.

876 IAC 1-1-3	876 IAC 4-1-3
876 IAC 1-1-23	876 IAC 4-2-1
876 IAC 1-1-24	876 IAC 4-2-4
876 IAC 1-1-26	876 IAC 4-2-5
876 IAC 2-17-3	876 IAC 4-2-9

SECTION 1. 876 IAC 1-1-3 IS AMENDED TO READ AS FOLLOWS:

876 IAC 1-1-3 Definitions

Authority: IC 25-34.1-2-5; IC 25-34.1-2-5.1

Affected: IC 25-34.1-3-2; IC 25-34.1-5

Sec. 3. (a) The definitions in this section apply throughout this title.

(b) "Person" means an individual, partnership, or corporation.

(c) "Commission" means the Indiana real estate commission.

(d) "Real estate" means any right, title, or interest in real property.

(e) "License" means a right to perform, for compensation, any of the acts provided in IC 25-34.1-3-2, as evidenced by a valid pocket card issued by the Indiana real estate commission.

(f) "Licensee" means one who holds a valid salesperson or broker license issued by the commission.

(g) "Course approval" means approval of a broker or a salesperson course granted under IC 25-34.1-5 and 876 IAC 2, which is not expired, suspended, or revoked.

(h) "Licensing agency" means the Indiana professional licensing agency.

(i) "Principal broker" means the individual broker, including the broker designated as representative of a corporation or partnership whom the commission shall hold responsible for the actions of licensees who are assigned to the principal broker.

(j) "Listing principal broker" means a principal broker who has a written contract with an owner, allowing him to sell, buy, trade, exchange, option, lease, rent, manage, list, or appraise real estate.

(k) "Selling principal broker" means

~~(1) a principal broker who is acting as a subagent of the listing principal broker, on behalf of the buyer and who provides an accepted offer to purchase to the seller. or~~

~~(2) a buyer agent or limited agent engaged by the buyer who provides an acceptable offer to purchase to the seller.~~

(l) "Managing broker" means a broker who manages a branch office.

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

(n) "Broker" means any person, partnership, or corporation, who holds a valid broker's license issued by the commission. A person who, for consideration:

(1) sells;

(2) buys;

(3) trades;

(4) exchanges;

(5) options;

(6) leases;

(7) rents;

(8) manages;

(9) lists;

(10) refers; or

(11) Appraises;

real estate or negotiates or offers to perform any of those acts.

(o) "Salesperson" means any person holding a valid salesperson's license issued by the commission. An individual, other than a broker, who, for consideration and in association with and under the auspices of a principal broker:

(1) sells;

(2) buys;

(3) trades;

(4) exchanges;

(5) options;

(6) leases;

(7) rents;

(8) manages; or

(9) lists;

real estate or negotiates or offers to perform any of those acts.

(p) "Broker-salesperson" means an individual who meets all the legal requirements of a broker but elects to operate in association with and under the auspices of a principal broker to whom his license is assigned. The broker-salesperson is subject to all rules and regulations applying to salespersons in association with a principal broker.

(q) "He" shall also mean she.

(r) "Owner/seller" means that person or persons of record in titled to or having an interest in the property or their duly authorized representative.

(s) "Referral" means the act of recommending or referring a sales lead that develops a client or customer.

(t) "Referral service" means a company or part of a company or franchise system established for the purpose of recommending or referring client or customer leads to other brokers. (*Indiana Real Estate Commission; Rule 4; filed Sep 28, 1977, 4:30 p.m.: Rules and Regs. 1978, p. 794; filed Mar 13, 1980, 2:30 p.m.: 3 IR 646; filed Dec 11, 1986, 10:40 a.m.: 10 IR 874; filed Dec 9, 1988, 1:25 p.m.: 12 IR 925, eff Jan 8, 1989; errata filed Dec 21, 1988, 3:45 p.m.: 12 IR 1209; errata filed May 15, 1989, 2:20 p.m.: 12 IR 1907; filed Jun 14, 1995, 11:00 a.m.: 18 IR 2785*)

SECTION 2. 876 IAC 1-1-23 IS AMENDED TO READ AS FOLLOWS:

876 IAC 1-1-23 Written offers to purchase; disposition of money received

Authority: IC 25-34.1-2-5; IC 25-34.1-2-5.1

Affected: IC 25-34.1-2-5

Sec. 23. Any and all written offers to purchase or authorization to purchase shall be communicated to the seller for his **or her** formal acceptance or rejection immediately upon receipt of such offer, and such offers or authorizations shall be made in quadruplicate, one **(1)** copy to the prospective purchasers at the time of signing, one **(1)** copy for the principal broker's files, one **(1)** copy to the sellers, and one **(1)** copy to be returned to the purchasers after acceptance or rejection. The listing principal broker shall, on or before the next two (2) banking days after acceptance of the offer to purchase by the seller, do one **(1)** of the following:

(a) **(1)** Deposit all ~~monies~~ **money** received in connection with a transaction in his **or her** escrow/trust account.

(b) **(2)** Delegate the responsibility to the selling principal broker to deposit ~~said monies~~ **the money** in the selling broker's escrow/trust account. ~~But~~

In any event, the ~~Indiana real estate~~ commission shall hold the listing principal broker responsible for ~~said monies~~ **the money**. In the event the earnest money deposit is other than cash, this fact shall be communicated to the seller prior to his **or her** acceptance of the offer to purchase, and such fact shall be shown in the earnest money receipt. All ~~monies~~ **money** shall be retained in the escrow/trust account so designated until disbursement thereof is properly authorized. **The listing and selling principal brokers holding any earnest money are not required to make payment to the purchasers or sellers when a real estate transaction is not consummated unless the parties enter into a mutual release of the funds or a court issues an order for payment.** (*Indiana Real Estate Commission; Rule 24; filed Sep 28, 1977, 4:30 p.m.: Rules and Regs. 1978, p. 800; filed Dec 11, 1986, 10:40 a.m.: 10 IR 878*)

SECTION 3. 876 IAC 1-1-24 IS AMENDED TO READ AS FOLLOWS:

876 IAC 1-1-24 Closing statements

Authority: IC 25-34.1-2-5; IC 25-34.1-2-5.1

Affected: IC 25-34.1-2-5

Sec. 24. Every listing **and selling** principal broker shall deliver to ~~the seller~~ **their client** in every real estate transaction wherein he **or she** acts as real estate broker, at the time such transaction is consummated, a complete detailed closing statement showing all of the receipts and disbursements handled by such principal broker. The listing **and selling** principal broker shall retain true copies of such statements in his **or her** files for at least five (5) years. The listing **and selling** principal broker or his ~~license~~ **or her licensed** associate acting on his **or her** behalf, shall attend all closings. (*Indiana Real Estate Commission; Rule 25; filed Sep 28, 1977, 4:30 p.m.: Rules and Regs. 1978, p. 801; filed Jan 16, 1979, 11:55 a.m.: 2 IR 315; filed Dec 11, 1986, 10:40 a.m.: 10 IR 878*)

SECTION 4. 876 IAC 1-1-26 IS AMENDED TO READ AS FOLLOWS:

876 IAC 1-1-26 Advertising requirements; name of principal broker; prohibitions

Authority: IC 25-34.1-2-5

Affected: IC 25-34.1-3-3.1; IC 25-34.1-3-4.1

Sec. 26. Any display, classified advertising, signs, **Internet advertising**, or business cards, which carries a licensee's name must contain the name of the principal broker or firm with whom the licensee is associated, and except for business cards, said principal broker or firm's name must be in letters larger than those used in advertising the licensee's name. All advertising shall be under the direct supervision and in the name of the principal broker or firm; a salesperson's name may not be a part of the firm name. Any advertising by a principal broker must reveal the surname of said broker as it appears on the broker's license issued by the ~~Indiana~~ **real estate** commission. Any television or radio advertising ~~which that~~ carries the name of any licensee associated with a principal broker must carry the name of the principal broker or firm, as licensed by the commission. A licensee shall not advertise in a manner

indicating that the property is being offered by a private party not engaged in the real estate business, and shall use no advertising where only a post office box number, telephone number, or street address appears. No licensee shall place a sign on any property, advertise or offer any property for sale, lease, or rent without the written consent of the seller or ~~his~~ **the seller's** authorized agent. (*Indiana Real Estate Commission; Rule 27; filed Sep 28, 1977, 4:30 p.m.: Rules and Regs. 1978, p. 801; filed Mar 13, 1980, 2:30 p.m.: 3 IR 648; filed Dec 11, 1986, 10:40 a.m.: 10 IR 879*)

SECTION 5. 876 IAC 2-17-3 IS AMENDED TO READ AS FOLLOWS:

876 IAC 2-17-3 Examinations; passing score

Authority: IC 25-34.1-2-5

Affected: IC 25-34.1-3-3.1; IC 25-34.1-3-4.1

Sec. 3. (a) The broker and salesperson examinations shall be standardized examinations for the testing of real estate brokers and salespersons. **The examination required of all applicants for licensure as a broker or salesperson shall be divided into the following two (2) sections:**

- (1) General real estate practices.**
- (2) Indiana licensure law.**

(b) Applicants for licensure by reciprocity shall only be required to take and pass the Indiana licensure section of the broker or salesperson exam, whichever is applicable.

~~(b)~~ **(c)** The examination will be electronically administered by the commission's duly appointed agent. However, individuals who are unable to take the electronically administered examination because of a disability may apply to take it on paper.

~~(c)~~ **(d)** An applicant shall be deemed to have passed the examination upon attaining a score of at least seventy-five percent (75%) on each section.

(e) If the applicant passes one (1) section of the examination, the applicant is credited for the section the applicant has passed and is not required to retake the section of the examination unless the applicant is retaking the examination after having to again comply with the education requirement in section 1(c) of this rule. (*Indiana Real Estate Commission; 876 IAC 2-17-3; filed Dec 9, 1988, 1:25 p.m.: 12 IR 936, eff Jan 8, 1989; errata filed Dec 21, 1988, 3:45 p.m.: 12 IR 1209; filed Dec 6, 1994, 4:57 p.m.: 18 IR 1286*)

SECTION 6. 876 IAC 4-1-3 IS AMENDED TO READ AS FOLLOWS:

876 IAC 4-1-3 Significant changes

Authority: IC 25-34.1-9-21

Affected: IC 25-34.1

Sec. 3. (a) Any significant changes in the operation of the approved sponsor must be approved by the commission prior to the effective date of the change. Any change in the course outline must be approved by the commission prior to the course being offered or given. The commission shall review the changes to determine whether or not the sponsor shall continue to be approved.

(b) Significant changes shall include the following:

- (1) Change in ownership of the sponsor, including changes in the officers and directors of the corporation.
- (2) A new school director.
- (3) A new instructor.
- (4) Any change in course outline.

(c) Once a continuing education instructor has been approved through the continuing education sponsor, the instructor is approved to teach for all continuing education sponsors.

(d) Notwithstanding subsection (b)(3), an instructor who has already been approved under this section or section 2 of this rule for another approved sponsor shall not be considered a new instructor. (*Indiana Real Estate Commission; 876 IAC 4-1-3; filed Dec 1, 1993, 10:30 a.m.: 17 IR 766; filed Jun 14, 1995, 11:00 a.m.: 18 IR 2790*)

SECTION 7. 876 IAC 4-2-1 IS AMENDED TO READ AS FOLLOWS:

876 IAC 4-2-1 Continuing education requirements

Authority: IC 25-34.1-9-21

Affected: IC 25-34.1-9-11; IC 25-34.1-9-19; IC 25-34.1-10

Sec. 1. (a) Every licensed real estate broker and salesperson who has not been granted an inactive license under IC 25-34.1-3-10 or a waiver under IC 25-34.1-9-19 must complete during each two (2) year licensure period at least sixteen (16) hours of the approved education ~~requirement~~ **requirements** under IC 25-34.1-9-11 and this article which are given by commission approved sponsors of courses in order to qualify for license renewal.

(b) Licensees attending continuing education courses shall present a government-issued photo identification and a real estate broker or salesperson pocket card for inspection by the course sponsor or a person designated by the course sponsor.

~~(b)~~ (c) Measurements and reporting shall be in full hours with a fifty (50) minute instruction period equaling one (1) hour.

~~(c)~~ (d) A course shall be a minimum of a two (2) hour instruction period.

~~(d)~~ (e) A minimum of two (2) hours and no more than eight (8) hours of instruction may be offered in a one (1) day course.

~~(e)~~ (f) A licensee shall not be entitled to any continuing education credit for a course unless the licensee attends the entire course.

~~(f)~~ (g) There shall be no minimum requirement of numbers of credit hours to be completed in each single year of the two (2) year licensure period.

~~(g)~~ (h) Any continuing education credit accumulated above the minimum requirement for a two (2) year licensure period shall not be carried forward to the next two (2) year licensure period.

~~(h)~~ (i) A licensee who attends the same approved continuing education course more than once in the same two (2) year licensure period is only entitled to continuing education credit for one (1) course.

~~(i)~~ (j) An instructor shall be entitled to continuing education credit for courses the instructor teaches. However, an instructor may not be credited for more than six (6) hours of credit for instructing in any two (2) year licensure period. Instructors may not receive credit for repeated courses. *(Indiana Real Estate Commission; 876 IAC 4-2-1; filed Dec 1, 1993, 10:30 a.m.: 17 IR 767)*

SECTION 8. 876 IAC 4-2-4 IS AMENDED TO READ AS FOLLOWS:

876 IAC 4-2-4 Curricula under IC 25-34.1-9-11(2)

Authority: IC 25-34.1-9-21

Affected: IC 25-34.1-9-11

Sec. 4. In addition to the subjects listed in IC 25-34.1-9-11(2), the following course subjects shall be allowed toward meeting the required ten (10) hours of course work:

(1) Subjects listed in IC 25-34.1-9-11(1).

(2) Property management, including lease agreements, accounting procedures, and management contracts.

(3) Timeshares, condominiums, and cooperatives.

(4) Industrial brokerage and leasing.

(5) Investment real estate analysis.

(6) Any course approved by the commission relating to real estate practices.

(Indiana Real Estate Commission; 876 IAC 4-2-4; filed Dec 1, 1993, 10:30 a.m.: 17 IR 768)

SECTION 9. 876 IAC 4-2-5 IS AMENDED TO READ AS FOLLOWS:

876 IAC 4-2-5 Course qualifications

Authority: IC 25-34.1-9-21

Affected: IC 25-34.1-5

Sec. 5. (a) All courses must be instructional and contribute to professional competence in the practice of real estate.

(b) The following courses do not qualify:

(1) Real estate broker or salesperson prelicensing courses under IC 25-34.1-5.

(2) Examination preparation.

~~(3) Mechanical skills.~~

~~(4) (3) Sales meetings.~~

~~(5) (4) In-house training sessions.~~

~~(6) (5) Correspondence.~~

~~(7) (6) Motivational classes or seminars.~~

(Indiana Real Estate Commission; 876 IAC 4-2-5; filed Dec 1, 1993, 10:30 a.m.: 17 IR 768)

SECTION 10. 876 IAC 4-2-9 IS AMENDED TO READ AS FOLLOWS:

876 IAC 4-2-9 License activation

Authority: IC 25-34.1-9-21

Affected: IC 25-34.1-9-11

Sec. 9. (a) In order to reactivate an inactive license at the time of license renewal, the licensee must have obtained all sixteen (16) hours of continuing education which would have been required for renewal had the license been active.

(b) In order to reactivate an inactive license during a two (2) year licensure period, the licensee must obtain the ~~six (6)~~ **sixteen (16)** hours of continuing education required by IC 25-34.1-9-11(1) **and IC 25-34.1-9-11(2)** for that two (2) year licensure period and pay a ten dollar (\$10) fee.

~~(c) A licensee who has reactivated the licensee's license during a two (2) year licensure period under subsection (b) must obtain the ten (10) hours of continuing education required by IC 25-34.1-9-11(2) in order to renew the license at the end of the two (2) year licensure period.~~ *(Indiana Real Estate Commission; 876 IAC 4-2-9; filed Dec 1, 1993, 10:30 a.m.: 17 IR 769)*

SECTION 11. SECTION 5 of this document takes effect October 1, 2001.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 28, 2001 at 11:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Indiana Real Estate Commission will hold a public hearing on proposed amendments to revise the definition of selling principal broker, to require mutual release or court to authorize the release of earnest money, to extend the requirements of listing principal brokers in closings to selling principal brokers, add Internet advertising to advertisement requirements, to revise incompetent practice concerning inducing parties to breach contracts, to require applicants applying for reciprocity to pass the Indiana licensure law portion of the examination, to divide the real estate broker and salesperson examination into two sections, to require applicants to pass both portions, to allow approved continuing education instructors to teach for other sponsors, to require photo identification or pocket card for admission to a continuing education course, to change the courses allowed to satisfy the ten hour continuing education requirement, to eliminate mechanical skills as a course that does not contribute to professional competency, and to require licensees to sixteen hours of continuing education to reactivate an inactive license. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E012 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gerald H. Quigley
Executive Director
Indiana Professional Licensing Agency