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**TITLE 876 INDIANA REAL ESTATE
COMMISSION**

Proposed Rule
LSA Document #01-427

DIGEST

Amends 876 IAC 1-1-23 to establish the requirements and procedures for the listing and selling principal broker to release earnest monies when one or more parties to a contract intends to perform. Amends 876 IAC 1-4-2 to revise the seller's residential real estate sales disclosure form. Amends 876 IAC 4-1-3 to allow continuing education courses once approved through continuing education sponsors to be used by other sponsors without further approval. Effective 30 days after filing with the secretary of state.

876 IAC 1-1-23

876 IAC 1-4-2

876 IAC 4-1-3

SECTION 1. 876 IAC 1-1-23, AS AMENDED AT 25 IR 102, SECTION 2, 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

Affected: IC 25-34.1-2-5

Sec. 23. (a) 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:

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

(2) Delegate the responsibility to the selling principal broker to deposit the money in the selling broker's escrow/trust account. In any event, the commission shall hold the listing principal broker responsible for 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 money shall be retained in the escrow/trust account so designated until disbursement thereof is properly authorized. The listing ~~and~~ or 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, **except as permitted in subsection (b).**

(b) Upon being notified that one (1) or more parties to an offer to purchase intends not to perform, the listing or selling principal broker, holding the earnest money, may release the earnest money deposit as provided in the offer to purchase or if no provision is made in the offer to purchase, the selling or listing principal, holding the earnest money, may initiate the release process. The release process shall require the selling or listing principal broker to notify all parties at their last known address by certified mail that the earnest money deposit shall be distributed to the parties specified in the letter unless:

(1) all parties enter into a mutual release; or

(2) one (1) or more of the parties initiate litigation;

within sixty (60) days of the mailing date of the certified letter. If neither buyer or seller initiates litigation or enters into a written release within sixty (60) days of the mailing date of the certified letter, the broker may release the earnest money deposit to the party identified in the certified letter. (*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; readopted filed Jun 29, 2001, 9:56 a.m.: 24 IR 3824; filed Aug 15, 2001, 9:50 a.m.: 25 IR 102*)

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

876 IAC 1-4-2 Residential sales disclosure; form

Authority: IC 24-4.6-2-7

Affected: IC 24-4.6-2

Sec. 2. The following is the seller's residential real estate sales disclosure form:

SELLER'S RESIDENTIAL REAL ESTATE SALES DISCLOSURE
State Form 46234 (R/1293)

Date (month, day, year)

Seller states that the information contained in this Disclosure is correct to the best of Seller's CURRENT ACTUAL KNOWLEDGE as of the above date. The prospective buyer and the owner may wish to obtain professional advice or inspections of the property and provide for appropriate provisions in a contract between them concerning any advice, inspections, defects, or warranties obtained on the property. The representations in this form are the representations of the owner and are not the representations of the agent, if any. This information is for disclosure only and is not intended to be a part of any contract between the buyer and the owner. Indiana law (IC 24-4.6-2) generally requires sellers of 1-4 unit residential property to complete this form regarding the known physical condition of the property. An owner must complete and sign the disclosure form and submit the form to a prospective buyer before an offer is accepted for the sale of the real estate.

Property address (number and street, city, state, ZIP code)

1. The following are in the conditions indicated:

A. APPLIANCES	None/Not Included	Defective	Not Defective	Do Not Know
Built-in Vacuum System				
Clothes Dryer				
Clothes Washer				
Dishwasher				
Disposal				
Freezer				
Gas Grill				
Hood				
Microwave Oven				
Oven				
Range				
Refrigerator				
Room Air Conditioner(s)				
Trash Compactor				
TV Antenna/Dish				
Other:				

C. WATER & SEWER SYSTEM	None/Not Included	Defective	Not Defective	Do Not Know
Cistern				
Septic Field/Bed				
Hot Tub				
Plumbing				
Aerator System				
Sump Pump				
Irrigation Systems				
Water Heater/Electric				
Water Heater/Gas				
Water Heater/Solar				
Water Purifier				
Water Softener				
Well				
Other Sewer System (Explain)				
			Yes	No
Are the improvements connected to a public water system?				Do Not Know
Are the improvements connected to a public sewer system?				
Are there any additions that may require improvements to the sewage disposal system?				
If yes, have the improvements been completed on the sewage disposal system?				
Are the improvements connected to a private/community water system?				
Are the improvements connected to a private/community sewer system?				

B. ELECTRICAL SYSTEM	None/Not Included	Defective	Not Defective	Do Not Know
Air Purifier				
Burglar Alarm				
Ceiling Fan(s)				
Garage Door Opener Controls				

D. HEATING & COOLING SYSTEM	None/Not Included	Defective	Not Defective	Do Not Know
Attic Fan				
Central Air Conditioning				
Hot Water Heat				
Furnace Heat/Gas				

2. ROOF	YES	NO	DO NOT KNOW
Age, if known: _____ Years			
Does the roof leak?			
Is there present damage to the roof?			
Is there more than one roof on the house?			
If so, how many roofs layers?			
3. HAZARDOUS CONDITIONS	YES	NO	DO NOT KNOW
Have there been or are there any existing hazardous conditions on the property, such as methane gas, lead paint, radon gas in house or well, radioactive material, landfill, mineshaft, expansive soil, toxic materials, mold, other biological contaminants , asbestos insulation, or PCB's?			
Explain:			

4. OTHER DISCLOSURES	YES	NO	DO NOT KNOW
Do improvements have aluminum wiring?			
Are there any foundation problems with the improvements?			
Are there any encroachments?			
Are there any violations of zoning, building codes, or restrictive covenants?			
Is the present use a nonconforming use? Explain:			
Have you received any notices by any governmental or quasi-governmental agencies affecting this property?			
Are there any structural problems with the building?			
Have any substantial additions or alterations been made without a required building permit?			
Are there moisture and/or water problems in the basement, or crawl space area, or any other area?			
Is there any damage due to wind, flood, termites, or rodents?			
Have any improvements been treated for wood destroying insects?			
Are the furnace/woodstove/chimney/flue all in working order?			
Is the property in a flood plain?			
Do you currently pay flood insurance?			
Does the property contain underground storage tank(s)?			
Is the seller homeowner a licensed real estate salesperson or broker?			
Is there any threatened or existing litigation regarding the property?			
Is the property subject to covenants, conditions, and/or restrictions of a homeowner's association?			
Is the property located within one (1) mile of an airport?			

E. ADDITIONAL COMMENTS AND/OR EXPLANATIONS: (Use additional pages if necessary).

The information contained in this Disclosure has been furnished by the Seller, who certifies to the truth thereof, based on the Seller's CURRENT ACTUAL KNOWLEDGE. A disclosure form is not a warranty by the owner or the owner's agent, if any, and the disclosure form may not be used as a substitute for any inspections or warranties that the prospective buyer or owner may later obtain. At or before settlement, the owner is required to disclose any material change in the physical condition of the property or certify to the purchaser at settlement that the condition of the property is substantially the same as it was when the disclosure form was provided. Seller and Purchaser hereby acknowledge receipt of this Disclosure by signing below:

Signature of Seller	Date	Signature of Buyer	Date
Signature of Seller	Date	Signature of Buyer	Date

The seller hereby certifies that the condition of the property is substantially the same as it was when the Seller's Disclosure form was originally provided to the Buyer.

Signature of Seller	Date	Signature of Seller	Date
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(Indiana Real Estate Commission; 876 IAC 1-4-2; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2352; filed Jun 14, 1995, 11:00 a.m.: 18 IR 2787; readopted filed Jun 29, 2001, 9:56 a.m.: 24 IR 3824)

SECTION 3. 876 IAC 4-1-3, AS AMENDED AT 25 IR 103, SECTION 6, 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~~ **and course outline have** been approved through the continuing education sponsor, the instructor ~~is~~ **and the course outline are** approved ~~to teach~~ for all continuing education sponsors. **It shall be the responsibility of the continuing education sponsor to ensure that the commission has previously approved the course outline.**

(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; readopted filed Jun 29, 2001, 9:56 a.m.: 24 IR 3824; filed Aug 15, 2001, 9:50 a.m.: 25 IR 103*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on August 22, 2002 at 10:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 4, Indianapolis, Indiana the Indiana Real Estate Commission will hold a public hearing on proposed amendments to establish the requirements and procedures for the listing and selling principal broker to release earnest monies when one or more parties to a contract intends to perform, to revise the seller's residential real estate sales disclosure form, and to allow continuing education courses once approved through continuing education sponsors to be used by other sponsors without further approval. 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