

State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
Division of Commercial Licensing and Racing & Athletics
233 Richmond Street
Providence, Rhode Island 02903

COMMERCIAL LICENSING REGULATION 11 –
REAL ESTATE BROKERS AND SALESPERSONS

Summary of Non-Technical Differences Between the Existing
Regulation and the Proposed Regulation as Amended

In accordance with R.I. Gen. Laws § 42-35-3(a)(5), the following is a concise summary of all non-technical differences between the existing and proposed rule with regard to this regulation:

Rule 34 is a new rule and therefore is not found in the current regulation. It adds a requirement for all holders of real estate brokers and salespersons licenses (“Licensees”) to successfully complete a course of at least three (3) clock hours, approved by the Real Estate Commission, on the recently revised law defining relationships in real estate transactions. This statute, R.I. Gen. Laws § 5-20.6-1, *et seq.*, was amended on July 6, 2007 and becomes effective on May 1, 2008.

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Section 1 ***Authority***

This regulation is promulgated pursuant to R.I. Gen. Laws §§ 5-20.5 and R.I. Gen. Laws § 42-14-17.

Section 2 ***Purpose***

The purpose of this regulation is to promote the general welfare of the citizens of Rhode Island by implementation of R.I. Gen. Laws § 5-20.5-1 *et seq.* so that the provisions thereunder may be best effectuated and the public interest be most effectively served.

Section 3 ***Definitions***

(A) “Act” means R.I. Gen. Laws § 5-20.5-1 *et seq.*

(B) “Agency” means any sole proprietorship, partnership, association, trust or corporation.

(C) “Associate Broker” means any Licensed Broker who is employed or engaged as an independent contractor by or in behalf of a Licensed Broker to do or deal in any activity as included or comprehended by the definitions of a Broker in subdivision (D) of this section, for compensation or otherwise.

(D) “Broker” means all persons, foreign and domestic, who for a fee, commission or other valuable consideration, or who with the intention or expectation of receiving or collecting a fee, commission, or other valuable consideration, lists, sells, purchases, exchanges, rents, leases, appraises, manages, or auctions any Real Estate, or the improvements thereon including options or who negotiates or attempts to negotiate any such activity; or who advertises or holds him or herself, itself or themselves out as engaged in those activities; or who directs or assists in the procuring of a purchaser or prospect calculated or intended to result in a real estate transaction. The term shall also include any person employed by or on behalf of the owner or owners of lots, or other parcels of Real Estate, at a stated salary, or upon a fee, commission or otherwise, to sell that Real Estate, or any parts thereof, in lots or other parcels, and who shall sell, exchange or lease, or offer or attempt or agree to negotiate the sale, exchange or lease, or offer or attempt or agree to negotiate the sale, exchange or lease of any such lot or parcel of Real Estate.

(E) "Clock Hour" means a period of at least fifty (50) minutes of classroom instruction.

(F) "Cooperating Broker" means a Licensed Broker acting as a seller's Broker or buyer's Broker.

(G) "Department" means the Department of Business Regulation.

(H) "Director" means the director of the Department.

(I) "License" means a Salesperson or Broker license issued by the Department.

(J) "Licensee" means an individual or Firm who holds a Salesperson or Broker License.

(K) "Net Listing" means an agreement in which a prospective seller lists Real Estate for sale with an authorization to a Broker to sell at a specified net dollar return to the seller and which provides that the Broker may retain as Commission the difference between the specified dollar return to the seller and the actual sales price.

(L) "Office Supervisor" means the Licensed Broker on file with the Real Estate Section of the Department who is designated as the individual responsible for the management of a branch office who ensures compliance with the Act and regulations.

(M) "Open To The Public" means a staffed office and/or one equipped with an answering service or device which is kept open for business during the legal business hours in the city or town in which it is located.

(N) "Principal Broker" means the Broker designated by an agency to be responsible for the agency's and/or any affiliated Licensees' compliance with the Act and regulations.

(O) "Promptly" means not more than ten (10) calendar days.

(P) "Real Estate" means leaseholds as well as any and every interest or estate in land, whether corporeal or incorporeal, freehold or non-freehold, whether the property is situated in this state or elsewhere.

(Q) "Real Estate Commission" means the Commission created pursuant to R.I. Gen. Laws § 5-20.5-12.

(R) "Salesperson" means any individual employed or engaged as an independent contractor by or on behalf of a Licensed Broker to do or deal in any activity as included or contemplated by the definitions of a Broker in subdivision (c) of this section, for compensation or otherwise.

(S) "Solicitation" means solicitation by telephone, mail, personal visit, materials delivered by hand or any other media.

Section 4 Severability

If any provision of these Regulations is held invalid, such invalidity shall not affect other provisions or application of these Rules and Regulations.

RULE 1 DISCIPLINARY ACTION

Any violation of the Act or this regulation shall be sufficient grounds for any disciplinary action permitted by statute.

RULE 2 AGENCIES

With respect to any sole proprietorships, partnerships, associations, trusts, Limited Liability Corporations (L.L.C.) or corporations Licensed by the Department:

(A) the Director will hold responsible the Principal Broker designated by an Agency to be responsible for the Agency's and/or its affiliated Licensees compliance with the Act and regulation;

(B) every real estate transaction in which an Agency participates as a Broker shall be under the supervision of the Principal Broker;

(C) the Principal Broker, in addition to ascertaining that a separate account is maintained for the funds of others coming into the possession of the Licensee, shall make certain that no funds of others are disbursed or utilized without his/her express authorization and knowledge; and

(D) the provisions of this regulation do not apply to a Broker affiliated in the capacity of Salesperson.

RULE 3 EXAMINATIONS

(A) In the conduct of examinations for Broker or Salesperson Licensees, the following examination rules shall prevail:

- (1) Examinees will not be permitted to refer to any notes, books or memoranda;
- (2) The copying of questions or making of notes is prohibited; and
- (3) No examinee shall leave the examining room except at the discretion of the examiner.

(B) Examinations may be written or oral. Requests for an oral examination or time extension may be made to and granted at the discretion of the Real Estate Administrator.

RULE 4 RE-EXAMINATION

There shall be a one (1) year time limit for reexamination with regard to failure of any section of the Broker or Salesperson examination. In the event that any section is not successfully completed within one (1) year and a passing grade received in all sections the entire examination must be retaken. If a License has expired for more than one (1) year, then the former licensee must re-apply by completing a new application and retaking the examination.

RULE 5 LICENSE RESTORATION CONTINGENT UPON RE-EXAMINATION

In a determination rendered upon any disciplinary action, the Director may, where the nature of the offense so warrants, impose as a condition to any future License restoration, the successful accomplishment of a written examination of the same type normally given to applicants for initial Licenses.

RULE 6 COMMINGLING OF FUNDS PROHIBITED

(A) No licensee shall commingle funds by:

- (1) Mingling the money or other property of the buyer(s)/seller(s) with his/her own; or
- (2) Failing to promptly segregate any monies or properties received which are to be held for the benefit of others.

(B) Where the nature of a given Real Estate transaction is such that the commission earned by a Broker in connection with services rendered in said transactions are included among the funds deposited in the Broker's escrow account, the portion of such which constitute the Broker's commission shall be Promptly paid from the escrow account, with appropriate annotations to the Broker's business records to define the amount and source of such commissions; provided, however, that such Broker shall have been previously authorized to make such disbursement.

(C) The maintenance of nominal amounts of the Principal Broker's funds in escrow accounts solely to provide continuity in such accounts or to meet bank service charges shall not be construed to be commingling. In the absence of any agreement to the contrary, the interest on monies placed in an interest-bearing escrow account shall accrue to the Broker; and

(D) Where any law or governmental regulation compels maintenance of a fixed amount of the funds of a Broker in an escrow account for the purpose of providing a safety factor, the maintenance of such fixed amount shall not be construed to be commingling.

RULE 7 OBLIGATIONS IN ACCEPTING FUNDS OR DEPOSITS

(A) Seller Retains Deposit. If the listing agreement so states, a Licensee may permit a buyer to draft a deposit check payable to the seller.

- (1) In the event that the deposit is retained by a seller, the Licensee shall have the obligation of informing the buyer that the seller does not have any obligation to place said deposit monies in an escrow account.
- (2) When the listing agreement requires the deposit be retained by the seller, the deposit check shall not be payable to anyone but the seller.
- (3) Except as herein provided, in no event shall any Licensee who received deposit funds payable directly to said Licensee turn said funds over to a seller.

(B) Forfeited Deposits. A Principal Broker may release a deposit to the seller based upon a good faith determination that the buyer has forfeited his/her rights to a return of said deposit, if the buyer has not filed a civil action for recovery of the deposit within sixty (60) days after receiving written notice by registered mail, return receipt requested of the Principal Broker's intent to release said deposit.

(C) Disputed Deposit. Whenever the ownership of any deposit monies received by a salesperson or broker pursuant to R.I. Gen. Laws § 5-20.5-26 is disputed by the parties to a real estate transaction, the following procedures shall apply:

- (1) If the ownership of the deposit monies is still disputed after 180 days from the date of the original deposit, the salesperson or broker shall transmit the deposit to the general treasurer. The transmittal shall be accompanied by the attached form entitled "Escrow Deposit Transmittal Form." The transmittal of the deposit to the general treasurer shall be made promptly after the expiration of the 180 days.
- (2) A minimum of thirty (30) days prior to the expiration of the 180 days, the broker or salesperson shall by written letter inform the parties (e.g. the seller and buyer) of the statutory requirements regarding disputed deposits. The letter shall contain the following language:

"As there has been no resolution regarding the disbursement of the deposit which is being held pursuant to a purchase and sales agreement for real property located at

_____, pursuant to R.I. Gen. Laws § 5-20.5-26, I will transmit the deposit to the general treasurer in thirty (30) days of _____ unless I receive a written release signed by both the parties regarding the disbursement of the deposit. If I do not receive such a release within thirty (30) days of _____, I will forward the deposit to the general treasurer where it will be held in trust until the dispute is mediated, arbitrated, litigated, or otherwise resolved by the parties.”

“The parties may extend the time by which the deposit must be deposited with the general treasurer by written agreement. If I do not receive a copy of any such agreement, if one exists, within thirty (30) days of _____, I will forward the deposit as required by law.”

- (3) If the parties resolve the matter after the deposit has been forwarded to the general treasurer, the parties must provide written proof in the form of a mutual written release, mediation agreement, arbitration award, or court order to the salesperson or broker who then must promptly act to obtain the deposit by forwarding to the general treasurer the attached form entitled “Claim for Return of Property.” Upon receipt of the deposit, the broker or salesperson must promptly disburse it to the parties pursuant to the determination of ownership of the deposit in accordance with the written release, mediation agreement, arbitration award, or court order.
- (4) If the salesperson or broker retires or dies after the deposit money has been transmitted to the general treasurer but before the issue of ownership of the deposit is resolved, said “Claim for Return of Property” shall be submitted to the general treasurer by either the successor agency, broker, or salesperson of the retired or deceased salesperson or broker. If no successor agency, broker, or salesperson exists, the parties shall complete the “Claim for Return of Property” and provide proof acceptable to the general treasurer that no successor Licensee or agency exists.
- (5) The above procedures regarding disputed deposits shall apply to all real estate transactions entered into on and after January 1, 2002. However, any broker or salesperson may voluntarily follow the above procedures regarding disputed deposits received from real estate transactions entered into prior to January 1, 2002.

(D) Receipt of Deposit by Cooperating Broker. A Cooperating Broker must turn the deposit over to the listing broker upon presentation of the offer unless there is an agreement in writing between the buyer(s)/seller(s) to the contrary.

(E) Escrow Agents. Funds or deposits placed in escrow pursuant to this regulation may be held by any person or entity legally authorized to hold funds in that capacity.

(F) Escrow Accounts:

- (1) Each Agency shall maintain an escrow account. A multi-office Agency shall maintain an escrow account for each office or one (1) central escrow account for the Agency. In the event a multi-office agency utilizes a central escrow account, the Office Supervisor in each Branch Office shall be given a monthly report as to the status of that office's escrows and shall be responsible for its accuracy.
- (2) Funds held in escrow may be applied to the Commission when earned by the listing company.
- (3) It is a violation of this regulation to fail to maintain and deposit within five (5) days in a special account in a Rhode Island depository institution, separate and apart from personal and other business accounts, monies received by a Principal Broker acting in said capacity or as an escrow agent, or as the temporary custodian of the funds of others in a real estate transaction;
- (4) Remaining commissions shall be brought to the closing for disbursement by the closing officer.

(G) Dual activities. In all Real Estate transactions in which a Broker acts in more than one capacity, i.e. builder, contractor, insurance agent, all deposit monies received must be placed in his/her Real Estate escrow account.

(H) Security Deposits. Security Deposits relating to rental agreements are exempt from the provisions of this section of the regulation.

RULE 8 COMMISSIONS

(A) Unless otherwise expressly provided by written agreement between the Principal Broker and an affiliated Licensee and cooperating broker and referring broker, all commissions due to a Licensee from the Principal Broker shall be subject to an accounting and payment to the affiliated Licensee and cooperating broker and referring broker no later than ten (10) calendar days from the receipt of such commission by the Principal Broker.

(B) Every Principal Broker must promulgate a written policy for the payment of commissions to affiliated Licensees on their termination. Such policy must prescribe the rate of commission to be paid, if any, on termination. The Principal Broker must obtain the written signature of each affiliated Licensee under such Broker as soon as such

affiliation is established, indicating that such affiliated Licensee agrees to such policy which shall include, but not be limited to the following:

- (1) Upon termination of affiliation or employment, the Principal Broker shall make a complete accounting in writing of all commissions due to Licensee;
- (2) In the event any commission so accounted for is not in accord with the established commission schedule, the Principal Broker shall give a complete written explanation of any difference; and
- (3) Such accounting shall be made within thirty (30) days after the termination of affiliation or employment of said Licensee.

(C) In the event the seller offers an incentive payment beyond the agreed listing fee to the procuring Licensee, the Principal Broker and the seller must have a written agreement describing the incentive payment and recognizing that if the sale is a cooperative sale, the incentive payment must be in conformity with R.I. Gen. Laws § 5-20.5-14(12) and must be distributed to the Licensee by the Principal Broker with whom he/she is affiliated.

RULE 9 ADVANCE FEES

(A) Any Principal Broker who charges or collects an advance fee in excess of twenty-five dollars (\$25.00) for services to be rendered, including but not limited to, advertising costs under an advance fee agreement, shall at the time of accepting said advance fee furnish his/her buyer or seller with a list of services to be rendered.

(B) This section shall not apply to advance fees charged by a Principal Broker for the purpose of performing an appraisal and/or a market analysis of real property.

RULE 10 RECORDS

(A) Every Principal Broker shall keep records of all funds and property of others received by him/her for not less than three (3) years from the date of receipt of any such funds or property.

(B) These records shall clearly indicate: the date, amount and from whom received, specifying property and reason for holding monies, date of deposit of such funds and name of depository bank, date of disbursement, amounts forwarded, together with the name of the recipient, and any other pertinent information concerning the transaction.

RULE 11 INSPECTION OF RECORDS

In order to reasonably effectuate the provisions of the Act and the regulation promulgated thereunder, every Principal Broker shall make available for inspection by the Director or his/her designee all records of transactions, books of account, instruments, documents and forms utilized or maintained by such Principal Broker in the conduct of the Licensed business, which may be pertinent to the conduct of the investigation of any specific complaint. All records pertaining to escrow accounts shall be made available upon demand. All other records shall be open for inspection during regular business hours.

RULE 12 PROHIBITION AGAINST LENDING NAME

(A) No arrangement, direct or indirect, shall be entered into by any Licensee whereby an individual Licensee lends his/her name or License for the benefit of another person, firm or corporation, or where the provisions of the Rhode Island General Laws and any regulations relating to licensing are circumvented.

(B) Any arrangement whereby a Broker's License is sought in the name of a Licensee supposed to be affiliated with the Principal Broker or is sought in the name of a firm or corporation containing the name of the affiliated Licensee but not containing the name of the Principal Broker responsible for the acts of such firm or corporation shall be construed as seeking to lend a Broker's License for the benefit of another individual, firm or corporation.

RULE 13 ADVERTISING

(A) Unless otherwise set forth herein, categories of advertising include but are not limited to any publication, any radio or television broadcasts, business stationary, business cards, business and legal forms or documents.

(B) All advertising of any Licensed individual, partnership, firm, or corporation of its activities as a Licensee of the Real Estate Section of the Department shall include the name under which that individual, partnership, firm or corporation is Licensed to do business as a Broker.

(C) When the name of a Salesperson or Broker acting in the capacity of a Salesperson is contained in any advertising, except on business cards, it shall be in print smaller and less conspicuous than that of corporation, partnership, firm or association which shall also appear. The business card of any Salesperson shall clearly indicate that his/her License is as a Salesperson or an Associate Broker.

(D) Any advertisement which refers to amounts of down payment, monthly payment carrying charges or which indicates that a mortgage is obtainable (where the mortgage referred to is not already a lien against the premises advertised), shall contain the words "to a qualified buyer."

(E) Any advertisement which sets forth amounts of down payment, monthly payment, carrying charges, taxes or mortgage money obtainable shall contain appropriate qualifying words such as “approximate” or “estimated”, which qualifying words shall be clearly associated with the amounts set forth. If such amounts are mentioned without qualification, the Licensee shall maintain written proof of the validity of such statements in his/her files. Such written proof shall be maintained for a period of three (3) years from the date upon which an advertisement containing such unqualified references shall have last appeared in any publication.

(F) With the exception of magazine or newspaper advertisements published under municipality headings, any advertisement for the sale, exchange or rental of residential real property placed by a Licensee, or any interest therein, shall designate the geographical area containing that property.

(G) No licensed individual, partnership, firm or corporation shall advertise or use any form of application or make any inquiry which expresses directly or indirectly any limitation, specification or discrimination as to race, color, religion, creed, sex, sexual orientation, marital status, disability, age, national origin or ancestry.

(H) Any use of an insignia, emblem, logo, trade name or other form of identification in any advertising or other public utterance, either by a single Licensee or group of Licensees, which suggests or otherwise implies common ownership or common management among such Licensees, shall be prohibited except in the case of branch offices controlled by a Principal Broker and duly Licensed as branch office. Nothing herein provided is intended to preclude or inhibit the use, advertising or display of any insignia, emblem, logo or trade name of any bona fide trade association by any Licensee provided that such Licensee is a member of such trade association.

(1) Any franchised Licensee using in any advertising the trade name of a franchisor shall include in such advertising in a manner reasonably calculated to attract the attention of the public the franchised Principal Broker’s operating name under which the individual, firm or corporation is Licensed to do business. Any Licensee including the franchisee using the trade name of a franchisor in any advertising shall also include in a manner reasonably calculated to attract the attention of the public the following legend or a substantially similar legend, “Each office independently owned and operated”, except for the following categories of advertising:

- (a) “For Sale” signs located on the premises of specific properties for sale; and
- (b) Small “spot” classified advertising by a single franchised Licensee in newspapers, magazines or other publications of specific properties for sale.

(I) Any advertising by any Licensee referring generally to membership in any real estate multiple listing service operation shall specify the complete name of the listing service in which membership is held, except in the following categories of advertising:

- (1) "For Sale" signs located on the premises of specific properties for sale;
- (2) Small "spot" classified advertising by a single Licensee;
- (3) Business cards; and
- (4) Business signs.

(J) Any advertising which contains an offer for a home warranty contract shall specify the essential terms of the home warranty contract offer and shall also indicate whether the warranty offer is mandatory. Essential home warranty terms are limited to components/structure in an inspection warranty and to components only in the case of a non-inspection warranty. Advertising shall comply with all Federal and State warranty legislation including the Magnuson-Moss Warranty Act, P.L. 93-63, 15 U.S.C. Section 2301 *et seq.*

(K) A Licensee may not advertise or distribute promotional material offering rebates or discounts including, but not limited to, discount plans or coupons redeemable for the discounted purchase of goods or services, if such advertisement or promotional material creates a likelihood of confusion or misunderstanding or is false, deceptive or misleading to the average customer. Every advertisement or piece of promotional material shall clearly and completely disclose to the consumer all material terms and conditions of the offering.

(L) All Licensees shall adhere to truth in lending requirements and shall not participate in paying of seller's costs or any payments to reduce interest costs.

RULE 14 AGREEMENTS

(A) Any Licensee shall Promptly deliver to all parties to any agreement of sale, lease, option or any other instrument or any amendment to any agreement of other instrument affecting an interest in real property, a duplicate original of any such executed agreement, instrument or amended agreement shall be initialed by all parties to the transaction.

(B) No listing agreement or contract for the sale of real property, or any interest therein, shall contain a pre-printed fee, Commission rate or Commission amount.

(C) Upon request, the Principal Broker shall advise the seller of the rate or amount of any Commission split or distribution.

(D) All listing agreements of any Licensee which provides for the listing of property with any real estate multiple listing service operation shall specify the complete name of that listing service.

(E) No Licensee shall enter into a Net Listing contract for the sale of real property, or any interest therein.

(F) A listing agreement which provides for the Principal Broker's retention of any portion of the deposit monies upon default by the buyer shall specifically state such in large type or bold print in such a manner as to inform the seller of this contingency.

RULE 15 OFFICES

(A) Every Principal Broker shall maintain an established place of business in the State of Rhode Island, which shall be Open to the Public during regular business hours. This regulation does not apply to Brokers affiliated in the capacity of a Salespersons or holders of reciprocal Licenses who by statute are not required to maintain offices in this State.

(B) If such office be located in a residence it shall be independent of living quarters and shall have direct access to the office or have a separate exterior entrance plainly visible from the street upon which the Licensed premises shall have frontage. This subsection shall not apply to offices in existence prior to January 1, 1959.

(C) No Principal Broker's established place of business shall be in the dwelling premises of any Licensee affiliated with that Principal Broker.

(D) If such office is located in a business or trade establishment, the real estate office shall have an exterior entrance plainly visible from the street upon which the Licensed premises has frontage and shall have the Licensee's regular business name in public view or on a sign in the lobby of the building in which the office is situated. Said office shall have a conference room where client confidentiality can be provided. The conference room may be the private office of the Licensee, but may not be a general office except when the general office area is greater than two hundred (200) square feet.

(E) Every Agency shall be under the direct supervision of a Principal Broker. Such Principal Broker shall be responsible for the full time management of said office.

(F) The name of the Licensee designated as the person responsible for the supervision of an office shall be on file with the Real Estate Section of the Department. No Licensee shall be responsible for the supervision of more than one (1) office at any time.

RULE 16 BRANCH OFFICES

(A) In the event the Principal Broker maintains a branch office(s), every such office shall comply with the provisions of Regulation 15.

(B) No branch office License shall be issued for a branch office situated in the dwelling premises of an affiliated Licensee.

(C) A branch office shall be under the direct supervision of the Licensed Broker designated as the Office Supervisor whose name shall be on file with the Real Estate Section of the Department.

(D) The Office Supervisor shall devote his/her full time to management of said office.

(E) When a branch office License is issued to a Broker it shall specifically set forth the name of the Broker in charge as Office Supervisor and shall be conspicuously displayed at all times in the branch office.

(F) A branch office License shall be returned for cancellation or correction upon the change of an Office Supervisor.

(G) A fee of twenty-five dollars (\$25.00) shall be paid for each branch office license issued by the Department.

RULE 17 FEES

Before an original License is issued, the applicant shall pay a fee of twenty-five dollars (\$25.00) which shall be deposited into the Real Estate Recovery Fund Account. Any fees prescribed by the Act shall be paid by check or money order made payable to the Rhode Island General Treasurer.

RULE 18 OLIGATIONS OF LICENSE SPONSORS

Recognizing the statutory requirement that any licensee shall be of good reputation, the sponsoring Broker, before applying for the licensing of any Salesperson applicant, shall assure him/herself and the Department that such applicant bears a good reputation for honesty and fair dealings.

RULE 19 PLACEMENT OF INSURANCE

Where a contract provided by a Broker contains a provision to the effect that such Broker, in his capacity as a Licensed insurance agent or Broker, is authorized to place or procure insurance on the property being sold, the Licensee benefiting by such a provision shall obtain separate written reaffirmation of such provision by the prospective insured within five (5) days prior to the closing of title.

RULE 20 GENERAL OBLIGATIONS OF LICENSEES

(A) All Licensees are subject to and shall strictly comply with the laws of agency and the principals governing fiduciary relationships. Thus, in accepting employment as an agent, the Licensee pledges him/herself to protect and promote, as he/she would his own, the interests of the principal he/she has undertaken to represent. This obligation of absolute fidelity to the principal's interest is primary, but does not relieve the Licensee from the binding obligation of dealing fairly with all parties to the transaction.

(B) Every Licensee shall make a diligent effort to ascertain all pertinent information and facts, including but not limited to lot size, zoning, presence or absence of town water or sewer connection, and in the course of a new dwelling, municipal acceptance of the plat and certificate of occupancy, concerning every property for which he/she accepts an agency, and concerning every person for whom he/she submits an offer to his/her principal. The Licensee shall reveal, in writing, all information and facts material to any transaction to his/her principal and when appropriate to any other party. This information shall include any actual or potential conflicts of interest which the licensee may reasonably anticipate.

(C) The Licensee shall diligently transmit every written offer on any specific real property or interest therein to the owner or his/her authorized representative.

(D) The Licensee shall promptly notify the Department of any changes in either his business or residence address.

RULE 21 DISCRIMINATORY PRACTICES PROHIBITED

(A) No Licensee shall solicit the sale, lease or the listing for sale or lease of residential property on the grounds of alleged change of venue due to the presence or prospective entry into the neighborhood of an individual or individuals of another race, creed, color, religion, sex, sexual orientation, marital status, national origin, disability, or age nor shall distribute, or cause to be distributed, material, or make statements designed to induce a residential property owner to sell or lease his/her property due to such change in the neighborhood.

(B) No Licensee shall violate the Fair Housing Practices Act, Title 43, Chapter 37 of the Rhode Island General Laws, the Civil Rights Act of 1866, 42 U.S.C. Sections 1981-1982, or the Civil Rights Act of 1968, Title VIII and Title IX, 42 U.S.C. Sections 3601-19, and 3631 to the extent that such violation constitutes a violation of the Act.

RULE 22 DELEGATION OF AUTHORITY

The Real Estate Section of the Department may grant the authority to sign applications for licensure or the transfer of Licenses to one other Licensed Broker not the Principal Broker and/or the designated Office Supervisor in an office. In the case of a

sole proprietorship partnership, association, trust or corporation the additional designated Broker must be an officer of the partnership, association, trust or corporation. A power of attorney must be on file with the Real Estate Section delegating such authority.

**RULE 23 TRANSFER AND RETURN OF LICENSE WHEN OFFICE
CLOSES**

(A) When a Licensee is transferring affiliation from one Agency to another a written notice must be sent to the Real Estate Section of the Department by the affiliated Principal Broker/Office Supervisor/or an officer of the Agency delegated the authority to do so, informing the Department of the termination of affiliation of the affiliated Licensee. A transfer of License form provided by the Department must be signed by the Principal Broker/Office Supervisor/or an officer of the Agency delegated the authority to do so of the new Firm with whom the Licensee will be affiliated and filed with the Real Estate Section of the Department.

(B) Upon the dissolution or termination of a Real Estate Agency the Principal Broker shall notify the Real Estate Section in writing of such an occurrence and return his/her License to the Real Estate Section of the Department within ten (10) days. When a dissolution or termination of a real estate firm occurs all Licensees affiliated with that Agency must transfer their License to another Agency or return it to the Department within ten (10) days for cancellation.

(C) The return of each Broker or Salesperson License must be accompanied by a letter terminating employment or affiliation in compliance with R.I. Gen. Laws § 5-20.5-14(33).

RULE 24 TEMPORARY LICENSES

For the purpose of expediting the right of Licensees to engage in Real Estate activities, where License certificates cannot be issued without delay after all conditions have been fulfilled, the Director directs that the following letter be forwarded to these Licensees:

Date
Principal Broker
Address
Broker's Reference No.
Salesman's Reference No.

This will acknowledge receipt of your fee in payment of a (Salesman's) (Broker's) License. Your License certificate, bearing the above date, will be issued within the next thirty days. In the interim, this letter will serve as your authority to engage in the real estate activities defined under the provisions of R.I. Gen. Laws § 5-20.5-1 *et seq.* This letter is to be

prominently displayed at your Broker's maintained place of business pursuant to the provisions of R.I. Gen. Laws § 5-20.5-7 as evidence of licensure until receipt of the License certificate. The authority granted herein shall be null and void thirty days from the receipt thereof.

RULE 25 RENTAL REFERRALS

(A) Every Licensee involved in the business of referring prospective tenants to possible rental units or locations for a fee from the prospective tenant shall enter into a written contract with the prospective tenant and give such person a copy of the contract. The Licensee must disclose the manner in which the listings or units had been obtained. Any fee charged in excess of ten dollars (\$10.00) shall be repaid or refunded to the prospective tenant if the prospective tenant, after a bona fide effort, does not obtain a rental conforming to his/her specifications, through the listings furnished by the Licensee, in 10-point bold type or larger, placed directly above the space provided for the signature of the prospective tenant. Said contract shall also state that a copy of this section has been provided to the prospective tenant, and all contracts must contain a provision to this effect. If the information concerning rentals furnished by the Licensee is not current or accurate in regard to the type of rental desired, the full fee shall be repaid or refunded to the prospective tenant upon demand.

(B) No licensee shall knowingly refer a prospective tenant to:

- (1) A nonexistent address; or
- (2) Property which was not for lease or rent.

RULE 26 APPRAISALS

(A) "Appraisal" or "Real Estate Appraisal" shall mean an analysis, opinion, or conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate that conforms to the standards adopted by the Uniform Standards of Professional Appraisal Practice ("USPAP").

(B) "Broker Price Opinion" ("BPO") shall mean an analysis, opinion, or conclusion prepared by a person licensed under R. I. Gen. Laws § 5-20.5-1 *et seq.* in the ordinary course of his or her business relating to the price of specified interests in or aspects of identified real estate or identified real property for the purpose of listing, purchase, or sale.

(C) "Comparative Market Analysis" ("CMA") shall mean an analysis, opinion, or conclusion prepared by a person licensed under R. I. Gen. Laws § 5-20.5-1 *et seq.* in the ordinary course of his or her business relating the price of specified interests in or aspects of identified real estate or identified real property by comparison to other real property currently or recently *sold* in the marketplace for the purpose of listing, purchase, or sale.

(D) A real estate salesperson and/or broker licensed under R.I. Gen. Laws § 5-20.5-1 *et seq.* shall disclose on a BPO or CMA that it is not an appraisal that conforms to the standards adopted by the USPAP. All BPOs and CMAs must include the following disclaimer:

This opinion or analysis is not a certified appraisal or an appraisal that conforms to the Uniform Standards of Professional Appraisal Practice (USPAP). It is intended only for the benefit of the addressee for the purpose of assisting buyers or sellers or prospective buyers or sellers in deciding the listing offering, or sale price of the real property and not for any other purpose, including but not limited to, lending purpose excepting that specifically provided under R.I. Gen. Laws 5-20.7-3.

(E) Any licensed real estate broker and/or salesperson who is not a certified appraiser pursuant to R.I. Gen. Laws § 5-20.7-1 *et seq.* shall not describe or refer to any valuation of real estate as a certified appraisal.

(F) No person, other than persons certified in accordance with the provisions of R.I. Gen. Laws § 5-20.7-1 *et seq.*, shall assume or use that title or any title, designation or abbreviation likely to create the impression of certification as a real estate appraiser by this state.

(G) The CMA or BPO or Appraisal shall be available to the Real Estate Administrator for a minimum of three (3) years.

(H) This Rule shall not apply to appraisals of real property carried out for the purpose of municipal valuation.

RULE 27 OBLIGATIONS IN SOLICITING REAL PROPERTY LISTINGS

(A) It is the obligation of all Licensees to provide professional services to sellers of real property and to respect the exclusive agency of other Brokers in accordance with R.I. Gen. Laws §§ 5-20.5-14 (11) and (23).-

(B) It shall not be a violation of this regulation for a Licensee to attempt to solicit an open listing or an expired listing of real property.

RULE 28 MANDATORY LEAD POISONING/LEAD HAZARD MITIGATION REQUIREMENT

(A) For every Licensee whose license is first issued or first renewed on or after July 1, 2004, said licensee shall present evidence to the Department that he/she has successfully completed a lead poisoning /lead hazard mitigation course on or after July 1, 2003 from a licensed proprietary school or an approved course provider as determined by

the Department, the Housing Resources Commission (HRC) and The Rhode Island Department of Health (DOH) prior to the issuance or renewal of the license.

(B) This requirement shall apply to first renewals when licenses were initially issued before July 1, 2004.

(C) Any lead poisoning/lead mitigation course offered by a licensed proprietary school or an approved course provider to fulfill this requirement must be no less than three (3) classroom hours.

(D) All Licensees are subject to this requirement. There shall be no exemptions from this requirement, including but not limited to individuals who currently hold a valid Broker's or Salesperson's License originally issued prior to December 27, 1984 and those exempt from testing and continuing education under R.I. Gen Laws 5-20.5-4(d).

RULE 29 CONTINUING EDUCATION FOR BROKERS AND SALESPERSONS

(A) Prior to renewal of any Broker's or Salesperson's License, the Licensee shall make a positive affirmation, either in writing or electronically, certifying under penalty of perjury to the Real Estate Section of the Department that the Licensee has attended and successfully completed during the preceding two (2) year period, eighteen (18) clock hours of real estate oriented educational sessions or courses of instruction of which at least six (6) clock hours must come from the following core courses:

- Law of Agency
- Law of Contracts
- Fair Housing
- Lead Hazard Mitigation
- RI License Law & Ethics

Twelve (12) hours may come from any courses approved by the Real Estate Commission in accordance with R.I. Gen. Laws § 5-20.5-12 unless exempt from the requirement under R.I. Gen. Laws § 5-20.5-2 and any other continuing education requirement mandated by the Department.

(B) The Real Estate Commission shall have the responsibility to:

- (1) Publish a list of approved providers at which courses may be taken.
- (2) Publish a list of approved courses. The courses shall be in, but are not limited to, the following areas:
 - (a) Law of Agency;
 - (b) Law of Contracts;

- (c) Real Estate Law and Conveyance;
 - (d) Real Estate Marketing;
 - (e) Legal Description and Zoning;
 - (f) The Closing Statement and Trust Account;
 - (g) Elements of Appraising, Construction and Design;
 - (h) Financing of Real Estate;
 - (i) Real Estate Insurance;
 - (j) Taxes and Real Estate;
 - (k) Real Estate Mathematics;
 - (l) Fair Housing;
 - (m) Rhode Island License Law and Ethics;
 - (n) Wetlands and Coastal Real Estate;
 - (o) Condominiums and Time Sharing Laws; and
 - (p) Lead Hazard Mitigation.
- (3) Create a sample, uniform certificate to be issued by the approved providers to be distributed to the students as proof of completion of the course; and
 - (4) All continuing education courses submitted for approval on or after June 1, 2001 will be approved for a three (3) year period. Resubmission is required for re-approval for additional three-year periods.

(C) The individual Licensee shall have the responsibility to:

- (1) Fulfill the requirements of this regulation; and
- (2) Affirm, swear and certify under penalty of perjury, compliance with the Continuing Education requirements set forth herein.

(D) Completion of the requirements of this section will be a condition precedent to renewal of a License. A Licensee's misrepresentation or false certification as to course attendance and completion will subject such Licensee to a "show cause" order as to why said Licensee's License should not be revoked. If a Licensee fails to show cause, the Director may revoke the License.

(E) This regulation shall in no way impose any requirements on those individuals who currently hold a valid Broker's or Salesperson's License originally issued prior to 12/27/84, those exempt under R.I. Gen. Laws § 5-20.5-2 or any Licensee who has been Licensed less than one hundred eighty (180) days prior to the expiration of the License. A Salesperson who obtains a Broker's License shall be subject to the continuing education requirements set forth herein.

(F) All Real Estate school permits shall expire annually on August 31 and those licenses will remain in effect for a period of one (1) year.

RULE 30 CONDUCT OF CASES

The Administrative Procedures Act and the Rules of Practice and Procedure in Administrative Hearing before the Department shall govern the procedures to be followed in all cases pursuant to this regulation.

RULE 31 SUBSEQUENT CHANGES IN THE REGULATION

Any changes in the Act which affect the content, language or intent of this regulation, will be deemed adopted by the Department on the date of implementation of the changes in the Act.

RULE 32 LICENSE TERM

Licenses shall be renewed on a two (2) year basis with the expiration being in even years.

RULE 33 ERRORS AND OMISSION INSURANCE

If a claim is made against a Licensee, the Licensee must forward said claim to his or her errors and omissions insurance carrier if it is reasonable to do so. If the Department orders or otherwise requests a Licensee to forward a claim to his or her errors and omission insurance carrier, the Licensee must do so promptly.

RULE 34 MANDATORY COURSE ON REVISED R.I. GEN. LAWS § 5-20.6 REGARDING AGENCY RELATIONSHIPS

(A) No later than April 30, 2008, every Licensee shall successfully complete a mandatory course of at least three (3) clock hours, approved by the Real Estate Commission, on the recently revised law defining relationships in real estate transactions.

R.I. Gen. Laws § 5-20.6-1, et seq., as amended on July 6, 2007 and effective May 1, 2008.

(B) Only those courses approved by the Real Estate Commission in accordance with R.I. Gen. Laws § 5-20.5-12 will satisfy compliance with this section.

(C) Compliance with this section will be a condition precedent to the renewal of all Licenses expiring April 30, 2008, including those initial Licenses approved within one hundred eighty (180) days of the expiration date of the initial License.

(D) To satisfy the requirements of this Rule, the Licensee shall make a positive affirmation upon renewal, either in writing or electronically, certifying under penalty of perjury to the Real Estate Section of the Department, that the Licensee has attended and successfully completed this mandatory course.

(E) Applicants for an initial Salesperson's License must submit satisfactory evidence of completion of an approved course of at least three (3) clock hours regarding R.I. Gen. Laws § 5-20.6-1, et seq., on Agency Relationships in Residential Real Estate Transactions, amended on July 6, 2007 and effective May 1, 2008, as part of the minimum of forty-five (45) classroom hours required for licensure.

(F) A Licensee's misrepresentation or false certification as to course completion will subject the Licensee to disciplinary action in accordance with R.I. Gen. Laws § 5-20.5-14, R.I. Gen. Laws § 42-35-1, et seq., Central Management Regulation 2 – Rules of Procedure for Administrative Hearings, and this Regulation.

Section 5 Effective Date

This Regulation shall be effective as indicated below.

DATE FILED: December 13, 2001

EFFECTIVE DATE: January 2, 2002

AMENDED: June 3, 2002
 June 23, 2002
 July 8, 2004

EMERGENCY
AMENDMENT: February 24, 2006

REPEAL OF
EMERGENCY
AMENDMENT: February 24, 2006

AMENDED: April 24, 2006

EMERGENCY
AMENDMENT: February 4, 2008

ESCROW DEPOSIT TRANSMITTAL FORM

Instructions: The broker or salesperson must transmit a signed original of this form to the General Treasurer's Office. (NOTE: include Licensee's address and telephone). A copy of this form must be sent to the Department of Business Regulation, Real Estate Section, 233 Richmond Street, Providence, RI 02903.

In accordance with R.I. Gen. Laws § 5-20.5-26, the enclosed check in the amount of \$ _____ is being transferred to the R.I. General Treasurer to be held in trust until the parties to the transaction can resolve the dispute regarding the deposit for real estate which is the subject of a purchase and sales agreement dated _____.

The Deposit was held for 180 days by the listing agency.

Date of Original Deposit

Parties have not agreed to extend the agreement pursuant to which the deposit is being held.

Property Address _____
Description of Property (Plat No. & Lot No.) _____

Name & Address of Seller _____ Telephone No. _____

Name & Address of Listing Real Estate Agency _____
Name of Seller's Agent(s) _____ License No. _____

Name of Principal Broker of Agency _____
Errors & Omissions Insurance Carrier _____
Errors & Omission Policy Number and Effective Date _____
Federal Tax ID No. _____

Name & Address of Buyer _____ Telephone No. _____

Name & Address of Buyer's Agent, if applicable _____
License No. _____

Name & Address of Cooperating Agency, if applicable _____

Name of Cooperating Agent _____ License No. _____
Errors & Omissions Insurance Carrier _____
Policy Number & Effective Date _____
Federal Tax ID No. _____

DATE: _____

Broker License Number _____ Signature of Principal Broker _____

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
CLAIM FOR RETURN OF PROPERTY
SALESPERSON OR BROKER AFFIDAVIT TO OBTAIN DEPOSIT**

Claim is hereby filed for a return of a deposit on a Real Estate Escrow Deposit turned over to the General Treasurer in accordance with R.I. Gen. Laws § 5-20.5-26. The deposit was transmitted to the General Treasurer on _____.

Complete and mail to the address below.

1. Name of Claimant: _____ SS# _____

Co-Claimant: _____ SS# _____

Present Address: _____
_____ Phone # _____

Name and address of original owner at time property was purchased: _____

2. Description of property: _____
_____ Amount of Deposit: _____

Holder: _____

3. This claim is made by (please check appropriate line):

() A. Original owner

() B. Under assignment of transfer

() C. As guardian, executor, administrator of other representative

() D. Under decree of distribution in probate proceeding

() E. As heir or legatee per will (enclosed copy)

() F. As heir and survivor when no will or probate proceedings were filed

() G. Other (please specify and explain)

4. If claimant presents this claim as heir and survivor, complete the following:

The Original owner left surviving him/her the following heir: (Note: Name widow/widower, children and if none, all the other heirs of the deceased, giving their relationship and place of residence.)

NAME	RELATIONSHIP	ADDRESS
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Continue on separate sheet, if necessary)

5. State of _____
County of _____

Each of the undersigned affiants (signatory), being duly sworn, deposes and states: That affiant(s) is/are the claimant(s) in the foregoing claim; that affiant(s) has read the foregoing claim and knows the contents therefor; that the same is true of affiant's own knowledge; that the money or property involved has not been received by affiant(s); that affiant(s) of said claim and sole person(s) entitled to receive the property set forth in said claim; and that affiant(s) agree to indemnify and hold harmless the State of Rhode Island, its officers and employees, from any loss resulting from the payment of said claim.

Affiant _____
(Claimant's signature)

Affiant _____
(Claimant's signature)

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public

My commission expires _____

Please attach supporting documents.

Mail all completed forms to:
Unclaimed Property Division
P.O. Box 1435
Providence, Rhode Island 02901-1435

RELEASE

KNOW ALL MEN BY THESE PRESENTS, that I, _____
residing on _____
in the city or town of _____ in the State of _____, for
and in consideration of the sum of _____ dollars (\$ _____)
or # _____ shares of stock of _____ company,
upon receipt by me paid by the General Treasurer of the State of Rhode Island, under
provisions of Section 33-21.1-1 to 33-21.1-41 of the General Laws of Rhode Island , do
hereby release and forever discharge the said General Treasurer and the State of Rhode
Island and its agencies and their successors from all debts, demands, actions and
liabilities whatsoever, which against the said General Treasurer and the State of Rhode
Island that I now or ever had, arising out of or relating to the aforesaid money property.

In further consideration of the payment of the aforementioned sum, I hereby agree to
indemnify and save harmless the General Treasurer, the State of Rhode Island, its
Agencies and successors form all claims or demands of any other person or persons on
the same account.

Sworn to before me this _____ day of _____ 20 _____

Notary Public

Claimant Signature

Claimant Signature

**RULE 34 MANDATORY COURSE ON REVISED R.I. GEN. LAWS § 5-20.6
REGARDING AGENCY RELATIONSHIPS**

(A) No later than April 30, 2008, every Licensee shall successfully complete a mandatory course of at least three (3) clock hours, approved by the Real Estate Commission, on the recently revised law defining relationships in real estate transactions, R.I. Gen. Laws § 5-20.6-1, *et seq.*, as amended on July 6, 2007 and effective May 1, 2008.

(B) Only those courses approved by the Real Estate Commission in accordance with R.I. Gen. Laws § 5-20.5-12 will satisfy compliance with this section.

(C) Compliance with this section will be a condition precedent to the renewal of all Licenses expiring April 30, 2008, including those initial Licenses approved within one hundred eighty (180) days of the expiration date of the initial License.

(D) To satisfy the requirements of this Rule, the Licensee shall make a positive affirmation upon renewal, either in writing or electronically, certifying under penalty of perjury to the Real Estate Section of the Department, that the Licensee has attended and successfully completed this mandatory course.

(E) Applicants for an initial Salesperson's License must submit satisfactory evidence of completion of an approved course of at least three (3) clock hours regarding R.I. Gen. Laws § 5-20.6-1, *et seq.*, on Agency Relationships in Residential Real Estate Transactions, amended on July 6, 2007 and effective May 1, 2008, as part of the minimum of forty-five (45) classroom hours required for licensure.

(F) A Licensee's misrepresentation or false certification as to course completion will subject the Licensee to disciplinary action in accordance with R.I. Gen. Laws § 5-20.5-14, R.I. Gen. Laws § 42-35-1, *et seq.*, *Central Management Regulation 2 – Rules of Procedure for Administrative Hearings*, and this Regulation.

State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
Division of Commercial Licensing and Racing & Athletics
233 Richmond Street
Providence, Rhode Island 02903

STATEMENT OF IMMINENT PERIL
FOR EMERGENCY AMENDMENT OF COMMERCIAL LICENSING
REGULATION 11 – REAL ESTATE BROKERS AND SALESPERSONS

The General Assembly made significant changes to the law defining relationships in real estate transactions, R.I. Gen. Laws § 5-20.6-1, *et seq.* It was amended on July 6, 2007 and becomes effective on May 1, 2008. To ensure that all holders of a real estate brokers and salespersons licenses (“Licensees”) understand the changes to this law and their responsibilities and duties to the public that they serve, the Department of Business Regulation (“Department”) is requiring all Licensees to successfully complete a course of at least three (3) clock hours, approved by the Real Estate Commission, on the recently revised law. As such, the Department issues the following emergency amendment to *Commercial Licensing Regulation 11 – Real Estate Brokers and Salespersons*:

RULE 34 MANDATORY COURSE ON REVISED R.I. GEN.
LAWS § 5-20.6 REGARDING AGENCY
RELATIONSHIPS

(A) No later than April 30, 2008, every Licensee shall successfully complete a mandatory course of at least three (3) clock hours, approved by the Real Estate Commission, on the recently revised law defining relationships in real estate transactions, R.I. Gen. Laws § 5-20.6-1, *et seq.*, as amended on July 6, 2007 and effective May 1, 2008.

(B) Only those courses approved by the Real Estate Commission in accordance with R.I. Gen. Laws § 5-20.5-12 will satisfy compliance with this section.

(C) Compliance with this section will be a condition precedent to the renewal of all Licenses expiring April 30, 2008, including those initial Licenses approved within one hundred eighty (180) days of the expiration date of the initial License.

(D) To satisfy the requirements of this Rule, the Licensee shall make a positive affirmation upon renewal, either in writing or electronically, certifying under penalty of perjury to the Real Estate Section of the Department, that the Licensee has attended and successfully completed this mandatory course.

(E) Applicants for an initial Salesperson's License must submit satisfactory evidence of completion of an approved course of at least three (3) clock hours regarding R.I. Gen. Laws § 5-20.6-1, *et seq.*, on Agency Relationships in Residential Real Estate Transactions, amended on July 6, 2007 and effective May 1, 2008, as part of the minimum of forty-five (45) classroom hours required for licensure.

(F) A Licensee's misrepresentation or false certification as to course completion will subject the Licensee to disciplinary action in accordance with R.I. Gen. Laws § 5-20.5-14, R.I. Gen. Laws § 42-35-1, *et seq.*, *Central Management Regulation 2 – Rules of Procedure for Administrative Hearings*, and this Regulation.

Pursuant to R.I. Gen. Laws § 42-35-3(b), an agency may adopt an emergency rule without prior notice or hearing if it finds adoption of a rule upon less than thirty (30) days' notice necessary because of imminent peril to the public health, safety, or welfare. The rule so adopted may be effective for a period not exceeding one hundred and twenty (120) days. *Id.* Furthermore, R. I. Gen. Laws § 42-35-4(b)(2) provides that, subject to constitutional or statutory provisions, an emergency rule may become effective immediately upon filing with the Secretary of State if the agency finds that such an effective date is necessary because of imminent peril to the public health, safety, or welfare.

The Department of Business Regulation has determined that conditions necessitate the amendment and adoption of this Rule on an emergency basis, to be effective upon filing with the Secretary of State. The Department finds that there is imminent peril to the public welfare in that the provisions set forth in this Rule are necessary to ensure that real estate licensees conduct themselves in accordance with the law defining relationships in real estate transactions, R.I. Gen. Laws § 5-20.6-1, *et seq.*, amended July 6, 2007, with an effective date of May 1, 2008.