

**The Bermuda Chamber of Commerce
Real Estate Division**

REAL ESTATE HANDBOOK



REVISED 2009

Chamber of Commerce Real Estate Division Handbook (2009 Version)

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I. Statement of Purpose and Overview

1. The objectives of the Real Estate Division are:
 - a) to ensure high standards of competence and conduct among Real Estate Agents at all times;
 - b) to increase public knowledge or awareness of the services provided by Agencies;
 - c) to recommend and review legislation pertaining to the industry and
 - d) to standardize operating procedures among members.

The regulations contained herein supersede all regulations in the previous Real Estate Division Handbook.

II. Glossary of Terms

The following words used herein are deemed to have the meanings specified below. {**Note:** these terms have not been reviewed by a legal advisor and have not, therefore, been approved by the membership as a ratified component of this Handbook}:

- Agency – a firm permitted to engage in trading in real estate by virtue of one of its members holding a real estate agent’s license in accordance with the terms of the Real Estate Licensing Act, 1976
- Agent – the person listed as holding the agent’s license for a firm
- Client – normally deemed to be a vendor or landlord who has engaged the services of that agency for the purposes of selling or renting his property; a prospect may be a client only in the event that he has contractually engaged the agency to represent his interests
- Co-brokee – agency which is party to an agreement to represent property listed by another agency for a share of the commission
- Co-broker – agency which is a party to an agreement to allow another agency to show properties listed by it for a share of the commission
- Customer – a prospect (see below)
- Member – an Agency which is a member of the Real Estate Division of the Bermuda Chamber of Commerce (or any licensed employee of that firm)
- Prospect – a prospective buyer or tenant
- Realtor – a real estate salesperson or agent acting on behalf of a licensed agency
- References – all references to vendor shall be taken to imply landlord equally. All references to purchaser shall be taken to imply tenant.
- Prefixes
 - “Co” – means no more than two agents
 - “Joint” - means to share equally

III. Division Operations

A. Membership

The Division has the right to determine the qualifications for membership in the Real Estate Division of the Chamber of Commerce. The Division also has the right and power to discipline all Members for any unethical acts or practices, and likewise to recommend and review legislation pertaining to the general practice of the Real Estate industry.

1. Membership Registration

The qualifications for Membership Registration in this Division require that a firm or a department of a firm shall be licensed in accordance with the provisions of the Real Estate Agents' Licensing Act 1976, and any subsequent amendments/regulations thereto.

2. Additional membership requirements

a) Members must agree in writing to abide by the guidelines set out herein, as they may from time to time be amended.

b) They must agree, specifically, to seek the opinion of the Resolutions Committee as a first step in resolving disputes with fellow members.

c) Members must be approved by the Membership Committee.

d) Members' staffs must familiarize themselves with the handbook, and all amendments that may be made to it.

3. Membership Dues are paid directly into the General Revenue Fund of the Chamber of Commerce. They may be used to finance Chamber-related functions, including surveys and/or promotions of benefit to all Members of the Chamber.

4. Agents will be held liable for the conduct of their staff.

B. Committees

The Chairman of the Executive Committee of the Division shall appoint the following sub-committees—Resolution; Membership; Industry Relations; Lobbying; Ethics and Standards, Nominating and MLS Oversight – at the first meeting of each new fiscal year and/or any other committee the Executive may deem appropriate from time to time. These committees have been established to assist the general membership of the Division, and may be consulted at any time.

1. Resolutions

- a) The Resolution Committee is empowered to convene hearings that may lead to decisions for remedial action concerning any irregularities, misunderstandings and/or controversy which may arise within the industry between Members of the Division or as may be forthcoming from the Public.
- b) If a member is accused, in writing, of unethical practices or is asked to present evidence in any disciplinary proceeding or investigation of that Committee, he/she shall place all pertinent facts before the Resolution Committee. The purpose is to avoid the need to take such grievances to the Courts and thereby avoid any possible adverse publicity.
- c) The Resolution Committee, if satisfied that a Member has been guilty of misconduct, may propose to the Executive of the Division to:
 - (1) make recommendation as to an equitable settlement; and/or
 - (2) warn; and/or
 - (3) suspend. Or in the case of repeated significant offenses
 - (4) make appropriate representation to the Superintendent of Real Estate.

2. Membership & Nominations

The Membership & Nominations Committee monitors the General Membership as well as considers incoming applications for Membership. It is the responsibility of this Committee to ensure that all dues are up-to-date, and that all new Members meet the requirements of Membership (see #7, Registration). The failure to pay dues within three months of the due date may result in the suspension of membership. The Committee is also responsible for ensuring that a full slate of Officers not less than 12 members including the Chairman is proposed at any Annual General Meeting.

3. Lobby/Industry Relations

The Lobby/Industry Relations Committee will liaise with Government or any other body on any matters pertaining to Government legislation and policies, changes of Acts and/or Regulations, as they may arise.

4. Ethics and Standards

The Ethics and Standards Committee will ensure that Division members maintain the highest ethical and business practices and standards by reviewing existing policies and procedures and recommending changes to the Handbook as necessary.

5. Education Committee
The Education Committee will co-ordinate educational programs in conjunction with continued education requirements of the Real Estates' Licensing Act 1976. Additionally, the Education Committee will arrange speakers from time to time as the Board deems necessary on topical subjects for the membership.

6. Rentals Committee
The Rental Committee will ensure that all Division Members uphold the existing policies

7. MLS Committee
The MLS committee has been formed to ensure that any multiple listing service endorsed by the Division and used by its members continues to meet the Division's requirements.

C. Disciplinary Powers

1. The Executive Committee of the Division, if satisfied that misconduct has been committed by a Member, may recommend to the Executive of the Chamber that the offender be:
 - a) suitably charged, where distribution of commission is involved; and/or
 - b) warned; and/or
 - c) suspended; and/or
 - d) recommended for expulsion from the membership of the Chamber of Commerce; and/or
 - e) referred to the Superintendent of Real Estate for further action.

2. The offender shall have the right of appeal to the Executive Board of the Bermuda Chamber of Commerce.

D. Chamber of Commerce Dues and Finances

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

2. Audited Financial Statements are made available to all Financial Members of the Chamber on an annual basis.

IV. Members' Code of Conduct

A. Relationship to the Client

1. In accepting a listing from a client the realtor is legally bound to protect and promote the interests of the client in connection therewith. This obligation of absolute fidelity to the client's interest is primary but it does not relieve the realtor from the obligation of dealing fairly with all parties to any given transaction.
2. Since the realtor is representing one party to a transaction, he shall not, and will not, accept compensation from more than one party without the full prior knowledge of all parties to the said transaction.
3. No realtor shall purchase for himself, either directly or indirectly, real estate listed with him for sale, nor shall he acquire any interest therein, either directly or indirectly, until he has disclosed in writing to the Superintendent and to the client complete details of his negotiations for the sale of the said property to any other person. An agent purchasing property on his own behalf or on behalf of any entity in which he has an interest must disclose his interest to the Vendor prior to entering into any negotiations with him in respect of that property.
4. When acting as an agent in the management of any property, the realtor will not accept any commission, rebate or profits on expenditure made for a client, without the written knowledge and consent of the client.
5. In the event that more than one offer on a specific property is made before the client has executed a sales/rental agreement, any other offer presented to the realtor, whether directly by a prospect or through another agency, should be transmitted to the client for decision.
6. In the event that any prospect has requested to be 'kept informed' on the potential sale of a property, with a view to allowing him to make a bid before it is sold, the client should be advised. The client's (vendor's) guidance shall determine whether or not such prospect is contacted in the event of other offers being made.
7. The listing agency may, if a client has withdrawn the listing, charge the client for related promotional expenses (e.g. advertising, long distance phone calls, etc), conditional upon this requirement being stated in the listing agreement.

B. Responsibility of Agents and Salespersons

1. On acceptance of a listing the agency automatically undertakes to represent the vendor. Where any agency is instead attempting to represent the purchaser, he must declare his interest so to do in advance. The co-brokering agency also is engaged to further the interest of the vendor.
2. It is the duty of all licensed realtors to protect the public against fraud or misrepresentation. Unethical practice in the real estate industry should be reported to the Chairman of the Resolution Committee. The realtor should also endeavor to eliminate in this community any unethical practices, which could be damaging to the public and/or the integrity of the real estate profession. All realtors should assist any Government Ministry or Commission charged with regulating the ethics and practices of realtors.
3. It is a responsibility of all agents to ensure that their licensed representatives are fully conversant with and adhere to the regulations contained in the Real Estate Agents' Licensing Act 1976 and other pertinent Acts/Policy Statements and amendments thereto. In addition the agent is responsible for keeping their realtors informed as to all aspects affecting the trading in real estate in the community in order to ensure that they are fully informed on matters of taxation, legislation, land use, planning regulations and other policies affecting trade in real property.
5. It is the duty of all realtors to be well informed on current market conditions.
6. It is the realtor's responsibility to make sure that all files pertaining to his client's property are kept current at all times.
7. The realtor should ascertain all pertinent facts concerning every property which he lists, so that the agency may fulfill its obligations and avoid errors, exaggeration, misrepresentation, or concealment of pertinent facts. The realtor should advise his client that all boundaries and rights-of-way should be properly defined in order to avoid misunderstandings.

C. Relationship to Fellow Real Estate Agents

1. The realtor should seek no unfair advantage over fellow realtors and should willingly share with them the lessons of his experience and study. If any realtor should wish unbiased advice pertaining to any transaction he may contact any member of the Executive Committee of the Real Estate Division and said advice will be freely given.
2. In the event of a controversy between members associated with different agencies, arising out of their relationship as realtors, the members shall submit the dispute to the Resolution Committee in accordance with the regulations of the Bermuda Chamber of Commerce rather than litigate the matter.
3. A realtor should not disparage the business practices of a competitor, nor volunteer an opinion of a competitor's transaction. If his opinion is sought, it should be rendered with strict professional ethics and integrity.
4. Once advertised (any media that is available to the public), without exception, a property must be co-broked upon request to other members unless otherwise instructed in writing by the client; such instructions are to be made available upon enquiry.
5. Co-Brokerage Activities
 - a) The entire agency is bound by a co-brokerage agreement signed by any licensed representative of that agency.
 - b) A realtor co-broking with a listing agency should not invite the cooperation of a third agency without the consent in writing of the listing agent. If such consent is given a breakdown of fees will apply as undernoted in Section V "Commissions & Fees".
 - c) Distribution of co-brokerage agreements in anticipation of receipt of a listing is fraudulent. A co-brokerage agreement which pre-dates a valid listing letter will be considered null and void.
 - d) Solicitation of clients introduced by another firm is unethical:
 - e) Where the co-broking agent submits an offer for sale or rent in writing to a listing agent, the listing agent is required to acknowledge receipt to the vendor and submission.
 - f) When requested by an Agent to co-broke a property known to be listed for sale or rent, the Listing Agent is required to co-broke that property unless the Vendor has specifically instructed that the listing is not to be co-broked.

- (6) Co-broking agent must not, under any circumstances, contact the listing agency's client directly:
- (a) it will be deemed unethical for a realtor to contact a vendor seeking a direct listing during the term of another agent's listing on which he has accepted a co-broke.
 - (b) Solicitation, *either direct or indirect*, of vendor/purchaser introduced by an agent to another agent by the agent so introduced is strictly unethical.
 - (c) must not contact to enquire when the listing agent's listing expires.
 - (d) Must not contact to arrange showings or provide feedback. A co-broking agent must only show co-broked property by prior appointment via listing agent
 - (e) If the vendor contacts the co-broking agent directly and without solicitation to do so, the co-broking agent may accept a direct listing, but should request that the vendor advise the co-broker personally of that change in the status of the property. The agency accepting a direct listing under these circumstances should also personally advise the agency who originally gave him the co-broke of the termination of that co-brokerage.
 - (f) A call to ask if another agency will accept a co-broke on a property, is subject to these protections if it can be demonstrated that the recipient of the call did not have previous knowledge of the availability of the property.
 - (g) It is recommended that the Listing Agent should apprise the co-broking agent on all matters pertaining to negotiation and contract
 - (h) Termination of co-brokes by co-broking agents
 - (a) The recipient of a co-broke may terminate that arrangement by notice in writing if the listing agency fails to provide timely service and information on the property. Either agency may be called before the Resolution Committee to justify their action.
 - (b) A co-broke is deemed still to be in effect if the co-broking agency has received a direct listing as a result of having breached the terms of the co-broke.

D. Introduction of Property

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

1. On the subject of securing an introduction vis a vis the client, listing agents are advised to include clear and unambiguous wording in their listing letters to ensure their entitlement to commission on all sales & rentals resulting from their introductions.
2. The following ethical prescription is for the purpose of resolving any dispute between competing agents:-

If a realtor is informed by, or in relation to, a prospect that such prospect may have interest in a property which he has previously seen or plans to see with another agency, the realtor so informed is advised to recommend that, that interest be pursued via the agency which originally introduced it.

3. The time from introduction to renewed interest should be within a “reasonable time” period. For this purpose “reasonable time” will be within 180 days of introduction.

E. Advertising

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

2. All advertising is to be at gross prices.

When a client indicates that his asking price is a "net" price, the realtor should, for the purpose of advertising and general dissemination of information about the property, determine a correct gross price. The standard procedure for calculating a gross price is due to divide the net price by .95 (95%) to allow for inclusion of the agency commission and then round the resulting figure up. The resulting price should be agreed with the client to ensure that all agencies representing the property do so on the same basis.

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

F. Forms of Contracts

1. Listing Agreements

- a) Note: It is the intention of the Real Estate Division of the Chamber of Commerce to introduce a standard Agency Agreement for the use of all Members firms. The following guidelines should be adhered to until such time as that document is provided:
- b) The document which establishes a listing should be correctly identified as an Agency Agreement.
- c) An agency must not offer property for sale or rent until instructed to do so in writing or by a listing agreement with the client.
- d) Listing agreements may be cancelled/amended by the client/agent in accordance with the contractual terms of the listing.
- e) An agency accepting a sole listing which will supplant existing open listings is advised to assist the client in notifying those agents whose listings are to be terminated by providing a written notification for the client's signature and distributing it to other agents.

1. A Chamber members must ensure that their listing agreements:

- (1) include a description of the property
- (2) give the client's name(s)
- (3) specify a gross asking price (all listings must be taken and co-broked at a gross asking price; a contract that specifies no 'consideration' for services rendered is not valid)
 - a) defining the preferred allocation of all costs other than commission: stamp duty and conveyancing costs
 - b) it is recommended that, where the listing price is given, the phrase "or at a negotiated price accepted by the Vendor" follows.
- (4) specify whether the listing is open or sole (with definition of each)
 - a) include a date of expiry (midnight of that date implied) for sole listings
- (5) disclose the 5% commission payable as recommended by the Real Estate Division of the Bermuda Chamber of Commerce.
- (6) be signed by both parties.

- (7) The agency is entitled to a commission of 5% in the event of a purchaser or vendor default (See suggested Sales Agreement wording below.)
- (8) If the agency intends to charge the client for costs incurred in the event of withdrawal of the listing, sale by the client, or any other circumstance, this should be clarified in the listing agreement.
- (9) There should be text somewhere in the body of the agreement to the effect that a duplicate copy has been provided for the client to keep in his files.
- (10) Whether or not advertising is authorized by the client should be clearly indicated in the agreement.
- (11) The client's instructions on co-brokerage should be obtained; the client should be advised that co-brokerage is recommended by the Chamber as being very much in his best interest.

2. Sales Agreements – It is recommended that the following point appear in Chamber members' Sales Agreements:

- a) should specify that the agency is entitled to a full commission in the event of a vendor's default.

3. Rental Agreements – It is recommended that:

- a) Residential Rentals, either Long-Term or Short-Term require a written Lease Agreement, giving full details of the terms and conditions of the agreed tenancy. The Agreement must be both executed by the respective parties and duly stamped - the correct stamps affixed in accordance with the law for the time being in force in Bermuda as determined by the Bermuda Government Stamp Duties Act 1976.
To avoid any doubt, in accordance with the Stamp Duties Act any 'renewal of a lease or agreement for a lease or extension of lease or agreement for a lease' is the same rate as for 'a lease and agreement for a lease.' This also includes Options terms for any renewal of leases.
- b) A deposit may be required by the landlord and utilized to cover breakages, damage, cleaning bills or any other payments and towards the recovery for loss of rents that are rightfully for the account of the tenant in accordance with the terms and conditions of the Lease Agreement.
Any deposit held by an agency must be held in escrow by the agency.
A deposit the equivalent of one (1) month's rent is suggested for all properties other than those which come under Clause 27 (2) of the Rent Increases (Domestic

Premises) Control Act 1978; a deposit for those properties under “Rent Control” may not exceed one half of one month’s rent.

Such deposit is to be refunded at the termination of tenancy, subject to the deduction of any expenses occasioned to the landlord by the failure of the tenant to comply with any conditions of the tenancy, which is the duty of the tenant to comply with and the manner in which any such deduction is calculated is clearly specified.

- c) If the tenant is a non-Bermudian in Bermuda under contract/work permit and such contract/work permit is terminated AND he is ordered by his employers or the Government of Bermuda to move away from Bermuda, or he is compelled to leave Bermuda by ill health then the tenant may terminate the tenancy hereby created by giving to the landlord or the agent three (3) calendar months’ notice to quit upon furnishing the landlord or the agent with satisfactory proof of the termination of his contract/work permit, or of his orders to move away from Bermuda, or medical evidence giving cause for him to leave Bermuda.
Note: Such notice period to quit may be reduced with the consent of the landlord.
- d) Division members’ leases should specify that disputes are to be settled by arbitration within the meaning of the Arbitration Act 1986. Arbitration by the Resolution Committee of the Real Estate Division of the Bermuda Chamber of Commerce is recommended.

4. Co-Brokerage Agreements – It is recommended that the following points appear in Chamber members’ Co-Brokerage Agreements:

- a) The document which establishes a co-brokerage agreement between two agencies should be correctly identified as a ‘Co-Brokerage Agreement’.
- b) It must be signed by a licensed representative of each firm.
 - (1) An unsolicited co-broke is not binding unless signed.
 - (2) The entire firm is bound by the agreement if signed by any licensed representative of that firm.
- c) The data provided should include:
 - (1) name of house
 - (2) address
 - (3) number of bedrooms
 - (4) number of bathrooms (including half baths)

- (5) square footage, if known
- (6) acreage
- (7) significant water amenities' (pool, dock, water rights, etc.)
- (8) 'view' information
- (9) additional apartments
- (10) any available rental income information
- (11) assessment number(s)
- (12) ARV(s)
- (13) colour of house and blinds
- (14) a description
- (15) price
- (16) the preferred allocation of all costs other than commission: stamp duty and conveyancing costs

5. Buyers' Agency

- a) Where an agency which is representing a prospective purchaser shows any property which is listed for sale by the vendor with another agency, such introduction must be handled on a co-brokerage basis.
- b) An agency acting, by contract, in the capacity of a buyer's agent is required to disclose this relationship to other agents and vendors in advance of making an introduction of property and in advance of entering into any negotiations.

G. Real Estate Appraisals/Opinions of Value

1. The realtor should not undertake a formal appraisal of real property that is outside the field of his capabilities, unless he obtains the assistance of an authority on such types of property, or unless the facts are fully disclosed to the client. In such circumstances the authority so engaged should be identified and his contribution to the assignment should be clearly set forth.
2. When commissioned to appraise real property, the realtor should not render an opinion without careful and thorough analysis and interpretation of all factors affecting the true value of the property, since his counsel contributes a professional service and he can be required by a court of law to present all the facts required in making such a judgment.
3. The realtor should not undertake to make an appraisal or render an opinion of value on any property where he has a present or contemplated interest unless such interest is specifically disclosed in the appraisal report.
4. An appraisal report is a statement of an informed opinion of what the value of a real property interest is at a given time.
5. Recommended criteria for selecting an appraiser are that he should be:
 - a) A member in good standing of the Bermuda Chamber of Commerce Real Estate Division (and therefore bound by fair business principles), or
 - b) Qualified under some international accredited professional valuation institution, or
 - c) Experienced by virtue of satisfactory representation of clientele for a period of three (3) years in a senior position and can give references, or
 - d) Ideally all of the above, and
 - e) Has professional indemnity insurance, and
 - f) Will guarantee a service acceptable to either the Accountant General or Land Valuation

Officer for relevant taxation purposes, or to whatever Court has jurisdiction.

6. These guidelines are recommended by the Bermuda Chamber of Commerce but the client exercises the final choice of selection of an Appraiser.

V. Commissions and Fees

A. Sales

1. Commission payable to an agency effecting a sale shall be 5% of the consideration.
2. Commission participation between two co-broking agents is normally 2.5% each unless otherwise agreed between the two parties.

B. Rentals

1. Residential Rentals

a) Long Term (a tenancy of six (6) months or MORE)

(1) Managed Properties:

- (a) The fee for managing a rental property can be structured in one of two ways. **EITHER** a finder's fee can be charged for placement of a tenant in addition to a monthly management fee for all of those services other than placement of the tenant **OR** a monthly fee may be charged for all services, including placement of tenants, as necessary.
- (b) Where an inclusive monthly rate is to be charged, the fee is ten percent (10%) of the monthly rental income,
- (c) Where the fee is to be segregated as between tenant placement and management:
 - the finder's (placement) fee will be (50%) of the first full one (1) month's rent;
 - the monthly fee for management services will be seven and a half percent (7.5%) of the monthly rental income.
- (d) Co-brokerage
 - In all cases**, on management properties, a co-broking agency is

entitled to twenty-five percent (25%) of the first full one (1) month's rent for services rendered in connection with placing a tenant.

Such monies will be paid within thirty (30) days of inception of the lease unless otherwise agreed in writing. The listing agent of managed property must advise the co broking agent in advance that the property is managed.

(2) Unmanaged Properties -Finder's Fee

- (a) If a property is rented for any period of six (6) months or more, the Finder's Fee will be equal to the first full one (1) month's rent.
- (b) The Finder's Fee in full is payable on or before the inception of the lease unless otherwise agreed in writing
- (c) Such Finder's Fee is NOT to be subject to a pro-rata refund in the event that the tenancy should be terminated early.
- (d) No Finder's Fee is payable on renewal of lease.
- (e) Co-brokerage:
The successful co-broking agent shall be entitled to fifty percent (50%) of the fee earned by the co-broker. Such monies will be paid within thirty (30) days of inception of the lease unless otherwise agreed in writing.

b) Short Term (a tenancy of less than six (6) months)

(1) Managed Properties

(a) The fee shall be fifteen percent (15%) of the gross rent for the period of the term.

(b) Co-brokerage:
The successful co-broking agent shall be entitled to twenty-five percent (25%) of the total fee earned by the listing agent for the period of the tenancy.
Such monies will be paid within thirty (30) days of inception of the lease unless otherwise agreed in writing.

(2) **Unmanaged Properties – Finder's Fee**

(a) If a property is rented for any period less than six (6) months, the Finder's Fee will be fifty percent (50%) of the first full one (1) month's rent.

(b) The Finder's Fee in full is payable on or before the inception of the lease unless otherwise agreed in writing.

(c) Such Finder's Fee is NOT to be subject to a pro-rata refund in the event that the tenancy should be terminated early.

(d) No Finder's Fee is payable on renewal of lease.

(e) Co- brokerage: The successful co-broking agent shall be entitled to fifty percent (50%) of the fee earned by the listing agent. Such monies will be paid within thirty (30) days of inception of the lease unless otherwise agreed in writing.

(c) **Long Term Pre-Paid Lease (for a minimum term of 5 years)**

(1) **Pre-Paid Leases:**

- (a) The Commission Fee shall be five percent (5%) of the total pre-paid sum.
- (b) The Commission Fee is payable on or before the inception of the lease for the full amount due on the Commission Fee lease term.
- (c) Such Commission Fee is NOT to be subject to a pro-rata refund in the event that the tenancy should be terminated early.
- (d) No Commission Fee will be applicable to renewal of lease.
- (e) Co- brokerage:
The successful co-broking agent shall be entitled to fifty percent (50%) of the fee earned by the listing agent. Such monies to be paid within thirty (30) days of inception of the lease unless otherwise agreed in writing.

In accordance with the Bermuda Immigration and Protection Act 1956
4.10 Policy: Lease of houses by exempt companies:

To permit locally operated exempt companies to lease any residential house the construction of which they, or another exempt company, have financed, provided the property:

- (a) is to be occupied by a person who is in the company's full time employment in Bermuda; and*
- (b) has an ARV which is at least as great as the minimum set by Government from time to time for ownership by non-Bermudians; and*
- (c) is rented for a period of no more than twenty-one years.*

2.

Vacation Property Services

Vacation (a booking for any given period)

Vacation Property Services are defined by the nature of the business, in that it offers fully furnished guest accommodations, which includes services such as maid and utilities. Vacation bookings are for any given period of time. A written booking reservation is required, giving full details of the guest terms of the booking, rate to be charged, and specifying the services to be provided (e.g.: maid, electricity, telephone, pool maintenance etc.) Bermuda Government Rental Tax is required to be paid for Non-Bermudian owners.

(1)

- (a) The fee for securing the placement of a guest shall be fifteen percent (15%) of the total accommodation rate for the period of the booking term.
- (b) The fee includes the following services: marketing, showings, completing guest booking reservation forms, collecting and holding deposits - refunding such deposits after departure less guests' incurred expenses or damages, collection and disbursement of accommodation monies to owner less fees and expenses.
- (c) The fee is payable at the commencement of each booking reservation and/or extension or renewal.
- (d) Co-brokerage:
 - Twenty-five percent (25%) commission to the successful co-broking agent for the period of the booking term;
 - Seventy-five percent (75%) commission to the listing agent for the period of the booking term.

Such monies to be paid within thirty (30) days of the occupancy date unless otherwise agreed in writing.

- (2) Monthly, where management services are provided:
 - (a) Management services may include any or all of the following:
Inspections, monthly statements, oversee domestic staff, payment of select bills associated with the premises and other additional services as agreed by the listing agency and the owner.
 - (b) Services provided should be set out in contract form specifying the Management Fee for providing such services.

3. Commercial

The commission will be based on locating the tenant, negotiating the lease, collection of rent and administration of the terms and conditions of the lease.

- a) Equivalent of half a month of rent for anything under six (6) months
- b) Equivalent of a full month's rent for any lease six (6) months or more.
- c) Or otherwise negotiated – therefore all commissions should be confirmed by the listing agent by means of a co-broking agreement prior to a property being shown to another agent.

(Note – any commission due is based only on the rent portion charged out monthly. The monthly service charge portion, if any, of the rents is not a commissionable item.)

C. Property Management, Residential, unrented

1. This fee will be as negotiated between agency and client, based on the services provided, which may include:

- collection of mail
- payment of bills
- supervision of household staff
- co-ordination of maintenance operations....

2. Commercial/Condominium

This would include the management of Office Buildings and Condominiums. This is a negotiated fee based on the services provided to supervise the operation of the property. Such services may include preparation of annual operating budgets, billing of tenants for their portion of the operating costs and the supervision of items relating to the budget. Such items are not limited to but may include plumbing, electrical, air conditioning, security, maintenance, landscaping, utilities, taxes, insurance and audit.

D. Real Estate Appraisals/Opinions of Value

1. Types of Valuations Undertaken

- a) sales
- b) rentals
- c) mortgages/financing
- d) development
- e) insurance
- f) estate planning
- g) asset allocation

2. Fee

- a) time and charges, or
- b) scale fee to be agreed between parties

VI. Laws, Customary Practices and Definitions

A. Rights of Parties

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

1. Each party to a real estate transaction is entitled to instruct separate and independent legal representation;
2. A purchaser is entitled to select the attorneys to draw the indenture of conveyance;
3. A mortgagee is entitled to select the attorneys to draw the indenture of mortgage;
4. A vendor and a mortgagor are entitled to instruct separate and independent legal representation to advise them and to vet the documents prepared by the attorneys of the other party;
5. Where a transaction involves both a conveyance and a mortgage, the attorneys who prepare the said indenture of conveyance need not also prepare the indenture of mortgage, and vice versa;
6. In a transaction involving both a conveyance and a mortgage the realtor and lending institution should in no event attempt to influence the selection of the attorneys to draw the conveyance and in all cases should ask a purchaser which attorneys he or she wishes to draw the conveyance and comply with those wishes. It would be inappropriate for agents or salespersons or lending institutions to instruct purchasers in the choice of attorneys to be used in the preparation of documents, etc.;
7. All real estate agencies must conform to the Real Estate Agents' Licensing Act 1976 and any subsequent amendments thereto when advertising;
8. The realtor, for the protection of all parties, should ensure financial obligations and commitments regarding all real estate transactions are in writing, expressing the exact agreement of all parties, and that copies of such agreements are delivered to all parties involved at the time of execution.

B. Forms of Listings

1. Sole Listing

A sole listing is defined as a property that is listed with only one agency whereby the listing agency is entitled to the full commission whether the property is sold or rented, as dictated by the listing agreement, by that agency or by the client directly.

2. Open Listing

Open listings represent property offered for sale or rent listed with more than one agency. The agency who effects the sale or rental is entitled to the full sales/rental commission.

C. Arbitration

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