

COOPERATION BETWEEN BUILDER AND REAL ESTATE BROKER/AGENTS

CODE OF CONDUCT

Builders Agree To:

- Treat the Broker/Agents and the Buyer with courtesy and professionalism.
- Make reasonable efforts to verify if there is a relationship between a Buyer and a Broker/Agent.
- Make reasonable efforts to become familiarized with the product and services provided by REALTORS®.
- Provide the REALTOR® and Buyer with correct and thorough information concerning the specific procedures involved in purchasing the product. Builders will make all presentations of the product and provide additional information requested in a timely manner.

REALTORS® Agree To:

- Treat Builder, the Builder's representatives and the Buyer with courtesy and professionalism.
- Be responsive to requests for additional information by the Builder/Builder Representative.
- If the Broker/Agent subscribing to these Procuring Cause Guidelines is a member of a Board of REALTORS®, nothing herein shall in any way affect, diminish or otherwise interfere with the duties and obligations of such subscribing Broker/Agent as a member of such Board of REALTORS®. In any conflict between these Procuring Cause Guidelines and the Code of Ethics or Rules and Regulations of the Board of REALTORS®, the latter shall govern.
- The Broker/Agents will make reasonable efforts to become familiar with the Builder's product and procedures.

Organizations Agree To:

- The Builders Association of Greater Indianapolis and the Metropolitan Indianapolis Board of REALTORS® will offer orientation/training sessions as needed for all Builders and REALTOR® members.
- BAGI and MIBOR will include these guidelines in information distributed to their members.

FACTORS FOR CONSIDERATION IN DETERMINING PROCURING CAUSE

1. There is no predetermined rule or regulation that establishes entitlement to a disputed commission.
2. Each transaction has unique characteristics and shall be determined individually and not with reference to earlier transactions, no matter how similar.
3. An award in arbitration will be in accord with state law.
4. An award in arbitration shall be based upon the entire course of conduct of the parties, their relationship and their understandings.
5. The following questions may be considered, but are not determinative of establishing procuring cause:
 - Was a Prospective Buyer Registration Form totally completed? Partially completed?
 - Was the Prospective Buyer Registration Form later submitted to the Builder? Within 48 hours?
 - Was the Agent for the Buyer present at the first meeting of the Builder and the Buyer?
 - If the Agent was not present, did he/she contact the Builder prior to the initial meeting?
 - Did the registration of the Buyer occur at one subdivision of the Builder and the sale at another of the same Builders' communities?
 - Did the sale occur during the sixty (60) days following registration of the Buyer?
 - If the sale occurred after the original sixty (60) day registration period, had the Agent re-registered the Buyer before the sale?



A REALTOR® and Builder Cooperative Agreement.



BUILDER/REALTOR® PACT GUIDELINES FOR THE GREATER INDIANAPOLIS AREA

INTRODUCTORY MATTERS

I. Occasionally, the earning of a commission in a new home sale is questioned. The question that arises is who “procured” the buyer. To assist in answering this question, the following guidelines have been developed.

II. The Builders Association of Greater Indianapolis (BAGI) and the Metropolitan Indianapolis Board of REALTORS® (MIBOR) have developed these guidelines, including the use of a “Prospective Buyer Registration Form,” to clarify the responsibilities of Builders and REALTORS® with respect to the earning and paying of commissions on new home sales (the Guidelines). These Guidelines have been developed in conformity with evolving legal requirements necessary to establish procuring cause in new home sales, and are set forth as Exhibit E.

III. BAGI and MIBOR also have developed a Code of Conduct to foster cooperation between Builders and REALTORS® in their mutual goal to sell homes, set forth as Exhibit D.

IV. Further, BAGI and MIBOR have developed a dispute resolution program to resolve disputes between Builders and REALTORS® that may arise concerning the payment of commissions (the “ADR Program”). Under this program, if the two parties cannot work out their dispute, then the dispute shall first be submitted to non-binding mediation for resolution. If mediation is unsuccessful, the dispute will then be resolved through binding arbitration. Details of the ADR Program are set forth in Exhibit F.

V. Builders and REALTORS® who wish to commit to using the Guidelines, Code of Conduct, and ADR Process (constituting the “Builder/REALTOR® Pact”), shall sign a Participation Agreement as contained in Exhibit B (for Builders) or Exhibit C (for REALTORS®). By signing the Participation Agreement, participants are agreeing to resolve commission disputes without the necessity or ability to go to trial.

VI. Commissions are not fixed, controlled, recommended, suggested or maintained by The Builders Association of Greater Indianapolis (BAGI) or the Metropolitan Indianapolis Board of REALTORS® (MIBOR). The amount a Builder agrees to pay a Broker is not prescribed by law and is negotiable between the Builder and the Broker. These guidelines shall not be interpreted to require a Builder to pay more than one commission.

They are intended to be flexible enough to accommodate the myriad of variations that will be presented, yet maintain some

continuity to the process. Special circumstances, which justify exceptions to these guidelines, may be agreed to by the REALTOR® and Builder.

Neither BAGI nor MIBOR shall have any liability to participant in the registration process under these voluntary guidelines.

DEFINITIONS

The following words and terms, when used in these guidelines, shall have the following meanings, unless the context clearly indicates otherwise:

1. **Builder** - The “Participating Builder”, is a Builder member of the Builders Association of Greater Indianapolis, who agrees to voluntarily accept these guidelines.
2. **Builder Representative** - The owner of the company or an authorized representative, acting on behalf of the builder, to conduct a real estate transaction.
3. **Broker** - The “Participating Broker”, is a REALTOR® for a real estate brokerage company, who agrees to voluntarily accept these guidelines and is a member of MIBOR.
4. **Agent** - The “Participating Agent”, is a REALTOR® licensed under a “Participating Broker”, who agrees to voluntarily accept these guidelines.
5. **Buyer** - The “Prospective Buyer”, is a person seeking to purchase a new home and who is introduced to a “Participating Builder” by a “Participating Broker/Agent.”

GUIDELINES

1. The REALTOR® and Builder/Builder Representative must sign each PROSPECTIVE BUYER REGISTRATION FORM (Exhibit A) presented to a Builder by a REALTOR®. By signing the agreement, the Broker and Builder have agreed to accept the guidelines to determine Procuring Cause.
2. An Agent who desires to register a Buyer under these guidelines must register the Buyer as Follows:
 - A) The PROSPECTIVE BUYER REGISTRATION FORM (Exhibit A) must be used. A Builder will not be required to accept a partially completed registration form.
 - B) The Buyer may approve the registration in writing prior to submission to the Builder.
 - C) An Agent is responsible for properly registering a Buyer with each participating Builder. Only one registration is required for builders with multiple sales sites.
 - D) Upon presentation of the form to a Builder/Builder Representative at any of the Builder’s subdivisions, the Buyer will be deemed to be registered with that Builder for all subdivisions for a period of sixty (60) days.

3. Upon a valid registration, these guidelines shall be used to determine Procuring Cause for any sale occurring during the sixty (60) days (“Registration Period”) following registration. Registration of a Buyer may be renewed by an Agent with a re-registration of the Buyer with the Builder. There are no limits to the number of registration renewals.

4. The Agent must accompany the Buyer to the sales office/model center on the first visit. This ensures that clear communications are established regarding the Buyer’s wants and needs, and the Agent’s registration of the Buyer is secured.

A) If the Agent is unable to accompany the prospective Buyer on the first visit, the Agent must then contact the Builder/Builder Representative by phone at the model/spec home in which the prospective Buyer is intending to visit PRIOR to the prospective Buyer’s first visit. If no one is available at the model/spec home, then the Agent must call and notify the Builder’s main office of the intended visit. The Agent’s notification shall include the prospective Buyer’s name, address, phone number and, if possible, set an appointment for the prospective Buyer’s visit to the model/spec home. The PROSPECTIVE BUYER REGISTRATION FORM must then be completed and delivered, either personally or by facsimile to the Builder’s model/spec home or main office within forty-eight (48) hours of the prospective Buyer’s first visit to ensure a proper and complete registration

5. If a Builder/Builder Representative takes or sends a Buyer who was introduced to him by an Agent to another community to show additional product and the Buyer builds or purchases the Builder’s product in the other community, the Agent shall be deemed to be the Procuring Cause of the sales in the other subdivision. A Builder/Builder Representative is responsible for notifying the Agent of the above.

6. The Builder/Builder Representative must notify the agent when a purchase agreement contract is to be written and the Agent may be present during the contract negotiations and signing.

7. A joint REALTOR®/BUILDER Advisory Group consisting of three representatives of each organization will meet on a regular basis, or whenever the group deems it necessary, to discuss any known issues with the Guidelines.

8. If, during the Registration Period, more than one Broker/Agent registers the same Buyer, the Brokers/Agents agree to hold the Builder harmless from the liability of payment of more than one commission.

SETTLING DISPUTES

Any dispute regarding compensation should be resolved by the parties involved. If unable to do so the parties will settle the dispute in one of the following ways:

REALTOR® TO REALTOR®

In the event there is a dispute between REALTORS® as to which REALTOR® should receive compensation from a BUILDER, the matter will be submitted by either REALTOR® through the MIBOR mediation/arbitration process in accordance with the provisions of the REALTOR® Code of Ethics.

REALTOR® TO BUILDER

The Builder and REALTOR® will cooperate with one another in avoiding and informally resolving disputes between them regarding the Builder/REALTOR® Pact (hereinafter referred to as "Pact"). Builder and REALTOR® acknowledge that in the event of disputes of the Guidelines which are not informally resolved, resolution of those disputes will be achieved through mediation, and if that is not successful then binding arbitration.

In the event there is a dispute between REALTOR® and Builders over the sale involving a registered customer the matter will be submitted through the mediation/arbitration process established under this "Pact." The dispute will be resolved through mediation, and if necessary, binding arbitration. Van Winkle Baten Rimstidt Dispute Resolution has been selected by BAGI and MIBOR to administer the mediation or binding arbitration system. If arbitration is utilized, then the judgement by the arbitrator shall be final and binding and may be entered into any court of competent jurisdiction.

ADR PROGRAM

Guidelines & Procedures for Mediation/Arbitration

Complaints between Builders and REALTORS® related to the Builder/REALTOR® Pact (hereinafter referred to as "Pact") will be handled as follows:

A) The Complainant will be requested to submit a request for mediation and/or arbitration to the Respondent, in writing, with all pertinent information relative to the complaint.

B) This request must be submitted within 180 days after closing on the property in question.

C) The Respondent then has twenty (20) business days after the complaint has been received to decide to either:

- 1) Contest the complaint, or
- 2) Take action to meet the Complainant's request.

D) After the above twenty (20) business days has expired, either party can elect to proceed with mediation under the ADR Program as agreed upon in the Participation Agreement. The party electing mediation can begin the process by completing the Request for Mediation form (Exhibit G) and submitting it to Van Winkle Baten Rimstidt Dispute Resolution. Upon the election of a party to mediate, a mediator shall be assigned by Van Winkle Baten Rimstidt Dispute Resolution to mediate Pact disputes and encourage settlement. The mediator shall confer with both parties to determine how the Pact dispute can be resolved through mediation and to arrange a convenient time to have all parties meet. However, the mediator shall act solely as mediator, and the mediator's action shall not be binding on any of the parties.

E) Mediation attempts regarding disputes of the Pact shall be considered settlement negotiations and shall not be used to the prejudice of either party. However, if the parties reach a settlement agreement during mediation, it shall be binding on them.

F) The parties shall share mediation fees of the third-party mediator equally. Mediations of Pact disputes by Van Winkle Baten Rimstidt Dispute Resolution will be \$375.00 per party, per half day (defined as 3.5 hours or less). The mediator's time will include time spent in mediation, reviewing materials submitted by the parties, travel and attendance at any mediation meetings (if necessary), and any pre- or post-mediation telephone calls with the parties.

G) After two (2) mediation sessions, or at such time as the mediator declares that any further mediation attempts would be unproductive, the mediation will be considered unsuccessful. At that time, either party shall submit the dispute to binding arbitration within ten (10) business days. If neither party has submitted the dispute to binding arbitration by the expiration of that time period, then Van Winkle Baten Rimstidt Dispute Resolution will set a date for an arbitration hearing within the next twenty (20) business days and notify all parties to the dispute.

H) Any arbitration of a Pact dispute shall be conducted by a neutral arbitrator designated by Van Winkle Baten Rimstidt Dispute Resolution. Procedures for submitting the dispute to the neutral arbitrator shall be established from time to time by Van Winkle Baten Rimstidt Dispute Resolution.

I) Arbitration fees of the arbitrator shall be shared equally by the parties. Arbitration of Pact disputes by Van Winkle Baten Rimstidt Dispute Resolution will be \$375.00 per party, per half day (defined as 3.5 hours or less). The arbitrator's time will include time spent in arbitration hearings, reviewing briefs and/or submissions submitted by the parties, travel and attendance at any pre-

arbitration meetings (if necessary), and preparing the decision.

J) The arbitration shall be binding and shall be conclusive of all Pact issues raised in the complaint which were not resolved prior to the date of the arbitrator's decision.

K) Any disputes concerning whether a party fully performed its obligations under any previous agreements, including a settlement agreement reached through a mediation (including determination of whether under applicable law the mediation settlement agreement remains in effect and what the parties' ongoing rights and obligations are regarding the settlement agreement and/or the original claims) shall be resolved through binding arbitration under the arbitration procedures described above. In that regard, if the Complainant disputes whether the "other party" has performed all of its obligations under the mediation settlement agreement, the Complainant may elect arbitration of that dispute by written notice delivered to the "other party" within ninety (90) days after the "other party's" deadline for performing its obligations. The arbitrator shall specifically be authorized to determine under applicable law what the parties' rights and obligations are, including whether they are governed by the settlement agreement. All of the provisions of the arbitration procedures as described above shall apply.

L) Both parties shall execute such reasonable documents as may be required by the mediators and/or the arbitrator, including documents regarding the confidentiality of information and materials that they receive and the mediator's and the arbitrator's immunity from liability regarding the dispute.

M) Nothing in these Procedures shall limit a party's right to file a lawsuit pertaining to issues not covered by the Pact. Otherwise, the parties agree that all issues covered by the Pact will be resolved through these Procedures. Further, the parties acknowledge and agree that results achieved through the ADR Program will be binding upon all parties and not reviewable by a court of law.

— SL/Builder Realtor Pact/Mediation & Arbitration Procedures



A REALTOR® and Builder Cooperative Agreement.





A REALTOR® and Builder Cooperative Agreement.

PROSPECTIVE BUYER REGISTRATION FORM

1. Builder _____ Subdivision _____

Builder Representative's Name _____ Phone _____

2. Prospective Buyer's Name _____

3. Participating Agent (print) _____

Company Name _____

Office Address _____

Phone (Office) _____ Pager/VM _____ Home _____

PROSPECTIVE BUYER'S SIGNATURE DATE

PROSPECTIVE BUYER'S SIGNATURE DATE

AGENT/BROKER'S SIGNATURE DATE

BUILDER REPRESENTATIVE'S SIGNATURE DATE

IS THIS A RENEWAL? Yes No





GREATER INDIANAPOLIS AREA REALTOR®/BUILDER GUIDELINES

BUILDER PARTICIPATION AGREEMENT

_____ (hereinafter “Builder”) as a member in good standing of the Builders Association of Greater Indianapolis (BAGI) have read and wish to participate in the Indianapolis Area REALTOR®/Builder Guidelines (hereinafter “Guidelines”) and agrees to cooperate with those REALTORS® belonging to the Metropolitan Indianapolis Board of REALTORS® (MIBOR) in accordance with the terms, conditions and procedures outlined in the Guidelines.

Builder understands that participation in the Guidelines is a privilege and may be revoked at any time if Builder is found to have violated the terms and conditions of the Indianapolis Area REALTOR®/Builder Guidelines or Builder’s own Policies and Procedures for Commissions and Referrals in effect at the time of the violation.

Builder agrees to mediation/binding arbitration in any dispute arising from this agreement or regarding the payment of any commission under the Guidelines pursuant to the procedures established by the “ADR Program” (see attached).

Builder hereby agrees to hold MIBOR and/or BAGI harmless and to indemnify MIBOR and/or BAGI regarding any expenses, including attorney fees and other costs, resulting in any way from any dispute arising under this agreement or regarding the payment or nonpayment of a commission under this agreement.

By: _____
Builder

SIGN AND MAIL OR FAX ONE COPY TO:
BAGI
P.O. BOX 44670
INDIANAPOLIS, IN 46202-0670
FAX: 317/236-6340

SIGN AND MAIL OR FAX ONE COPY TO:
MIBOR
1912 N. MERIDIAN
INDIANAPOLIS, IN 46244
FAX: 317/956-5050





GREATER INDIANAPOLIS AREA REALTOR®/BUILDER GUIDELINES

REALTOR® PARTICIPATION AGREEMENT

_____ (hereinafter “REALTOR®”) as a member in good standing of the Metropolitan Indianapolis Board of REALTORS® (MIBOR) has read and wish to participate in the Indianapolis Area REALTOR®/Builder Guidelines (hereinafter “Guidelines”) and agrees to cooperate with those Builders belonging to the Builders Association of Greater Indianapolis (BAGI) in accordance with the terms, conditions and procedures outlined in the Guidelines.

REALTOR® understands that participation in the Guidelines is a privilege and may be revoked at any time if REALTOR® is found to have violated the terms and conditions of the Indianapolis Area REALTOR®/Builder Guidelines or Builder’s own Policies and Procedures for Commissions and Referrals in effect at the time of the violation.

REALTOR® agrees to mediation/binding arbitration in any dispute arising from this agreement or regarding the payment of any commission under the Guidelines pursuant to the procedures established by the “ADR Program” (see attached).

REALTOR® hereby agrees to hold MIBOR and/or BAGI harmless and to indemnify MIBOR and/or BAGI regarding any expenses, including attorney fees and other costs, resulting in any way from any dispute arising under this agreement or regarding the payment or nonpayment of a commission under this agreement.

By: _____
REALTOR®

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BAGI
P.O. BOX 44670
INDIANAPOLIS, IN 46202-0670
FAX: 317/236-6340

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