

## COOPERATION BETWEEN BUILDERS AND REAL ESTATE BROKER/AGENTS

This agreement supersedes and replaces the previous agreement outlining cooperation between REALTORS® and Builders.



### 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 professional working relationship between a Buyer and a Broker/Agent which has resulted in introduction to the Builder.
- 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 the 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 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 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 (BAGI) and the MIBOR REALTOR® Association (MIBOR) will offer orientation/training sessions as needed for all Builder and REALTOR® members.
- BAGI and MIBOR will include these guidelines in information distributed to their members.
- 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.

## FACTORS FOR CONSIDERATION IN DETERMINING ENTITLEMENT TO COMPENSATION

- 1) There is no predetermined rule or regulation that establishes entitlement to 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 entitlement to compensation:
  - 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?

# **BUILDER/REALTOR® PACT GUIDELINES FOR THE GREATER INDIANAPOLIS AREA**

## **INTRODUCTORY MATTERS**

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:

BAGI and 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 determine entitlement to compensation in new home sales.

BAGI and MIBOR also have developed a Code of Conduct to foster cooperation between builders and REALTORS® in their mutual goal to sell homes.

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 nonbinding 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 this document.

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.

Commissions are not fixed, controlled, recommended, suggested or maintained by BAGI or 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 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:

**Builder** - The “Participating Builder”, is a Builder member of the Builders Association of Greater Indianapolis, who agrees to voluntarily accept these Guidelines.

**Builder Representative** - The owner of the company or an authorized representative, acting on behalf of the builder, to conduct a real estate transaction.

**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.

**Agent** - The “Participating Agent”, is a REALTOR® licensed under a “Participating Broker”, who agrees to voluntarily accept these Guidelines.

**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**

The REALTOR®, Buyer and Builder/Builder Representative must sign each PROSPECTIVE BUYER REGISTRATION FORM (Exhibit A) presented to a Builder by a REALTOR® or the Builder's Proprietary Customer Registration form, or complete an electronic registration as outlined below.

An Agent who desires to register a Buyer under these Guidelines must register the Buyer using one of the following methods:

- 1) The PROSPECTIVE BUYER REGISTRATION FORM (Exhibit A), or
- 2) A Builder's Proprietary Customer Registration Form - A Builder's Proprietary Customer Registration Form at a minimum must include requests for information to determine if the Buyer is working with an Agent, the Agent's name and the Buyer's name, or
- 3) **Electronic Registration:**

### **On-line Registration**

(If applicable and if available on Builder's website) – Agent and/or Buyer may register online using the Builder's website registration process prior to the Agent and/or Buyer visiting the Builder's model home or office.

**Faxed/Scanned Registration Form** – Agent and/or Buyer may send a faxed or scanned signed copy of the Prospective Buyer Registration Form or the Builder's Proprietary Customer Registration Form prior to the Agent and/or Buyer visiting Builder's model home or office.

**Email Notification** – Agent may send email notification to Builder or Builder's Representative regarding a Buyer's intent to visit Builder's Model Home or office. The Agent's email notification should include the Buyer's name, address, phone number and, if possible, set an appointment for the Buyer's visit to the Builder's model home or office. The Prospective Buyer Registration Form or the Builder's Proprietary Customer Registration Form must then be completed by the Buyer during that first visit to the Builder's model home or office.

(It is not the intent that any of the electronic registration processes contained herein should be used by an Agent to communicate "en masse" to Builders or Builder's Representative in an effort to establish procuring cause for a Buyer. The Electronic Registration methods established by these Guidelines were designed to better facilitate communication between Agents and Builders or Builder's Representatives regarding a Buyer's particular interest in a Builder or a Builder's model home. An Agent found to be using the Electronic Registration process improperly will be subject to the review and sanctions in accordance with these Guidelines.)

- 4) A Builder will not be required to accept a partially completed registration form.
- 5) An agent using any of the registration methods described above and the Builder accepting any of the registration methods described above agree to accept all of the Guidelines contained herein to determine Procuring Cause.
- 6) It is the Agent's responsibility to properly register a Buyer with each participating Builder.
- 7) Builder acknowledges that only one registration is required for builders with multiple sales sites.
- 8) Upon completion of one of the registration methods described above, the Buyer will be deemed to be registered with that Builder for all subdivisions for a minimum of thirty (30) days, or per individual builder's guidelines, whichever is greater.
- 9) 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.
- 10) The Agent should make every effort to 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.
- 11) If the Agent is unable to accompany the prospective Buyer on the first visit, the agent must use one of registration methods described above to inform the Builder or Builder Representative that customer intends to visit the Builder's model home or office. The Agent should make every effort that the

Electronic Registration should occur PRIOR to the Buyer's first visit to the Builder's model home or office.

12) 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 sale in the other subdivision. A Builder/Builder Representative is responsible for notifying the Agent of the above.

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

14) 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 for a new construction transaction, 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. *Note: This document may be introduced as evidence in these types of disputes.*

#### **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 Builder 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. If arbitration is utilized, then the judgment by the arbitrator shall be final and binding and may be entered into any court of competent jurisdiction.

### **VOLUNTARY MEDIATION**

At any time prior to utilizing the ADR Program procedures below, parties may elect to participate in voluntary mediation with a mediator selected from a joint REALTOR®/Builder pool of trained mediators. There is no cost to the parties for this option and if an agreement is reached, it becomes binding, and parties need not proceed to the ADR Program procedures outlined below. However, if no agreement is reached, parties will participate in the ADR Program. To build this pool of mediators, members of MIBOR and BAGI will complete mediation training.

### **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:

- 1) 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.
- 2) This request must be submitted within 180 days after closing on the property in question.
- 3) The Respondent then has twenty (20) business days after the complaint has been received to decide to either:
  - Contest the complaint, or
  - Take action to meet the Complainant's request.

4) 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 Petition for Mediation form (Exhibit D) and submitting it to MIBOR. MIBOR will notify the other party of the Petition for Mediation and provide both parties with a list of MIBOR/BAGI approved mediators. The parties may strike one firm and MIBOR will contact the third firm to arrange the mediation. A mediator will be assigned by the mediation firm and will 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.

5) 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.

6) The parties shall share mediation fees of the third-party mediator equally. 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.

7) 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, the mediation firm will set a date for an arbitration hearing within the next twenty (20) business days and notify all parties to the dispute.

8) Any arbitration of a “Pact” dispute shall be conducted by a neutral arbitrator designated by the mediation firm. Procedures for submitting the dispute to the neutral arbitrator shall be established from time to time by the mediation firm.

9) Arbitration fees of the arbitrator shall be shared equally by the parties. 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.

10) 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.

11) 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.

12) 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.

13) 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.

**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) \_\_\_\_\_ Cell \_\_\_\_\_ Home \_\_\_\_\_

Email Address \_\_\_\_\_

\_\_\_\_\_  
PROSPECTIVE BUYER'S SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PROSPECTIVE BUYER'S SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
AGENT/BROKER'S SIGNATURE

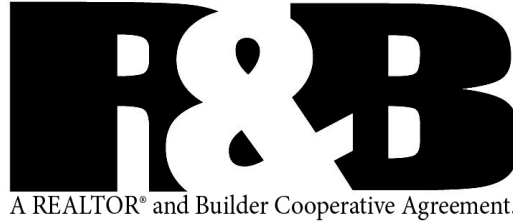
\_\_\_\_\_  
DATE

\_\_\_\_\_  
BUILDER REPRESENTATIVE'S SIGNATURE

\_\_\_\_\_  
DATE

IS THIS A RENEWAL? \_\_\_\_\_ Yes \_\_\_\_\_ No

**Exhibit B**



**GREATER INDIANAPOLIS REALTOR®/BUILDER GUIDELINES**

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**BUILDER PARTICIPATION AGREEMENT**

This revision dated January 20, 2016 supersedes all previous REALTOR® Cooperative Agreements.

\_\_\_\_\_ (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 MIBOR REALTOR® Association (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 RETURN TO:**

BAGI  
6510 TELECOM DRIVE, SUITE 185  
INDIANAPOLIS, IN 46278 FAX: 317/236-6340

**SIGN AND RETURN TO:**

MIBOR  
1912 N. MERIDIAN  
INDIANAPOLIS, IN 46202 FAX: 317/956-5083



**GREATER INDIANAPOLIS REALTOR®/BUILDER GUIDELINES**

**REALTOR® PARTICIPATION AGREEMENT**

This revision dated January 20, 2016 supersedes all previous REALTOR® Cooperative Agreements.

\_\_\_\_\_ (hereinafter “REALTOR®”) as a member in good standing of the MIBOR REALTOR® Association (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®

**SIGN AND RETURN TO:**

BAGI  
6510 TELECOM DRIVE, SUITE 185  
INDIANAPOLIS, IN 46278  
FAX: 317/236-6340

**SIGN AND RETURN TO:**

MIBOR  
1912 N. MERIDIAN  
INDIANAPOLIS, IN 46202  
FAX: 317/956-5083





**PETITION FOR MEDIATION**

Date: \_\_\_\_\_

I, \_\_\_\_\_ with \_\_\_\_\_  
(principal broker or builder) (firm)

wish to initiate the mediation of a dispute resulting from the commission earned on

\_\_\_\_\_  
(property address)

I request that \_\_\_\_\_ of  
(principal broker or builder)

\_\_\_\_\_ join with me in this mediation process.  
(firm)

I agree to mediate in good faith, and understand that I am not compelled to reach an agreement. I also understand that if no agreement is reached and any further remedies are considered, the Code of Ethics obligates REALTORS® to arbitrate rather than litigate. If no agreement is reached and if both parties are subscribers to the REALTOR®/Builder Cooperative Agreement, the dispute resolution processes contained in the Cooperative Agreement will take effect.

I, the undersigned, represent and warrant that I possess all necessary authority to execute this Agreement and any agreement that may be reached during the mediation process.

Principal of Firm \_\_\_\_\_ Title \_\_\_\_\_

Name of Firm \_\_\_\_\_ Date \_\_\_\_\_



**OPT OUT FORM**

I, \_\_\_\_\_ with \_\_\_\_\_  
(principal broker or builder) (firm)

wish to no longer participate as a signatory to the REALTOR®/Builder Cooperative Agreement as of \_\_\_\_\_.  
(Date)

Principal of Firm \_\_\_\_\_ Title \_\_\_\_\_

Name of Firm \_\_\_\_\_ Date \_\_\_\_\_

**SIGN AND RETURN TO:**

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6510 TELECOM DRIVE, SUITE 185  
INDIANAPOLIS, IN 46278  
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**SIGN AND RETURN TO:**

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