

**2010 - 2012 Mandatory Course**  
"Situations Which May Constitute Unprofessional Conduct"

Course Provider: Quality Workshops  
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Program Offering Dates: Posted at Web Address

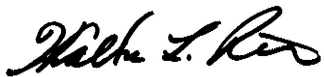
Number of Hours of Education: 4 cr. Hrs.

Instructor: Russell F. Niquette Jr., Esq.

Course Style: Classroom

Course Purpose: Continuing Education

*We hereby certify that the information contained in this application is true and accurate to the best of my knowledge and belief. We have read the course responsibility checklist and agree to adhere to all requirements.*



Walter L. Rice – Principle



Justin N. Rice – Sales and Marketing

# "Situations Which May Constitute Unprofessional Conduct"

Course Outline, Handout, & PowerPoint

## RESPA (Real Estate Settlement Procedures Act) and Other Federal Compliance

- Requirements, purposes, & issues of RESPA (Real Estate Settlement Procedures Act) and Other Federal Compliance.
- Understand, disclose to client, and plan for potential home closing delays which may be caused by lender compliance with RESPA and other related federal laws and rules.
- Disclose business affiliations and that an individual is not obligated to use affiliated business services (eg. insurance, lender, and inspection services).
- Taking unearned fees or unearned benefits (kickbacks).
- How RESPA has proven helpful to both buyers and sellers of real estate.
- How the RESPA regulations have affected brokerage practices.
- See competency provisions at 26 VSA §2296(a)(3) and 3 VSA §129a(b)(2). Also see 3 VSA §129a(a)(3) (failure to comply with provisions of federal...statutes or rules governing the practice of the profession).

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#### **Advertising Issues**

- Using advertisements which are dishonest or misleading (26 VSA §2296(a)(2)) or that are intended or have a tendency to deceive (3 VSA §129a(a)(2)).
  
- Advertising another firm's listing without disclosing the other firm and agent's name. See Rule 4.12(d); includes dissemination of MLS data sheets showing other firm's listings to persons who have not received the mandatory consumer disclosure required by Rule 4.6.

#### **Material Facts Disclosure**

- Disclose a material fact concerning the condition of the property in all instances where the agent has knowledge of the fact. See Rule 4.5(a) for customers; see Rule 4.3(a) for clients.
  
- Disclose a material fact concerning the condition of the property that the agent should have known about under principles related to competency. See 3 VSA §129a (b)(2) (To conform to the essential standards of acceptable and prevailing practice).
  
- Disclose a previous failed inspection. See Newsletter, Spring 2010.
  
- Terminate the service agreement when the principal refuses to consent. See Rule 4.5(b).

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**Conflicts of Interest**

- Maintain an office policy on conflicts of interest; (i.e. you have two buyer clients who want to make an offer on same property; you have a buyer client and a seller client that want to come together on a transaction).
- Include a provision for avoiding dual agency and other conflicts in service agreements used by the agent.
- Suggesting that "limited agency" under Rule 4.4 occurs automatically when a conflict of interest develops between a seller and buyer client.
- Comply strictly with the "limited agency" procedures set forth in Rule 4.4 including a thorough explanation to the clients of the effects of limited agency.
- Engaging in the unlawful practice of designated agency.

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**Registering Your Brokerage Firm**

- Register a brokerage firm as required by Rules.
  
- Register “trade name” when and as required. See advertising exemption in Rule 4.12(b) created by 2008 rules amendments.
  
- See 26 VSA §2294. Also see Rule 2.3(b) and Rule 2.6. Also see Rule 3.4 and 3 VSA 129a(a)(14) for complete list of “change items” which must be communicated to the commission and/or OPR. See Rules 4.1 and 4.2 for conduct of licensees related to location in main or branch offices.

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**Mandatory Disclosure**

- Provide mandatory consumer disclosure as required by Rule 4.6.
- Provide the disclosure before accepting an agency (ie. every client file should show proof of disclosure having been completed prior to entering into the service agreement).
- Provide disclosure to a FSBO seller.
- Renew the disclosure as needed to avoid a customer's misplaced belief that s/he is being represented by the agent when that is not in fact the case.

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**Sign Laws**

- Comply with Vermont's sign law when placing "for sale" signs or "open house" signs. See 10 VSA §493(2) and §495. See Rule 4.12(c).
  
- Place signs "on premise" as currently interpreted and enforced by the TIC (no signs in common driveway unless wholly owned).

**Trust Accounts**

- Provide a closing statement required by Rule 4.14(b)
  
- Commingling money (Examples: To make a timely deposit into trust account; early withdrawal of deposit except upon termination of the transaction; early withdrawal of funds before scheduled closing even if in anticipation of closing; mixing lease and rental deposits).
  
- Comply with provisions for handling disputed deposits. See Rule 4.7(d).
  
- Maintain proper accounts and/or to communicate information to the Commission as required by Rule 4.7. Also see 26 VSA §2214.

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**Record Keeping**

- Keep accurate and complete records as required by Rule 4.14.
- Maintain and follow office policy for documentation and record keeping.
- Preserve electronic communications from a transaction (e.g. emails).

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## **Service Agreement Issues**

- Performing brokerage services when the listing has expired.
- Listing a property while it is still under contract with another firm.
- Entering into a buyer service agreement without checking to see if buyer has executed another contract with another firm.
- Include a clear description of whether and how other firms will be compensated (e.g. the buyer brokerage firm or the cooperating (selling) brokerage firm).
- Clearly state any limitations on services.