

**Arizona Department of Real Estate**  
**Education Advisory Committee**  
**2910 N. 44<sup>th</sup> Street, Suite 100**  
**Commissioner Conference Room**

**Agenda**  
**June 14, 2011**  
**10 am to Noon**

- I. Call to Order
- II. April 12, 2011 - Meeting Minutes - Review/Approval
- III. Tucson Office - Closure
- IV. Education Advisory Committee – Upcoming Appointments
- V. Update on Pre-licensure Testing Vendor – Commissioner Lowe/Carla Randolph
- VI. Revised ADRE Model Broker’s Policy and Procedure Manual
- VII. Volunteer Monitor Program – Commissioner Lowe
- VIII. What’s Making the Phone Ring in Education – Commissioner Lowe/Carla Randolph
- IX. Review Education/Licensing Division Monthly Reports (Handout) – Carla Randolph
- X. 2011 Legislative Update – Gretchen Conger
- XI. Upcoming – Commissioner Lowe
- XII. Next EAC Meeting: September 13, 2011
- XIII. Other Matters
- XIV. Call to the Public
- XV. Adjournment

TEAM  
“Together Everyone Achieves More”



Arizona Department of Real Estate (ADRE)  
Education Advisory Committee (EAC)  
Minutes  
April 12, 2011

The Education Advisory Committee (EAC) met on Tuesday, April 12, 2011 at the Arizona Department of Real Estate (ADRE), 2910 N 44<sup>th</sup> Street, Commissioner's Conference Room, Phoenix, Arizona.

**I. Call to Order**

Commissioner Judy Lowe called the meeting to order at 10:05 a.m.

**Members present:** Bob Bass, John Crosby, Holly Eslinger, Lin Ferrara, Jim Hogan, Andrew Jaffe, Jon Kichen and Jim Marian.

**Unable to Attend:** Tom Heath

**Attend via phone:** John Lotardo

**ADRE Representative:** Commissioner Judy Lowe, Assistant Commissioner-Operations Mary Utle, Business Services Manager Vicky Rokkos, Education Manager Carla Randolph, Legislative Liaison Gretchen Conger and Administrative Assistants Tami Grays and Jeremy Sotomayor

**Public:** Marti Barnewolt, Esther Hogan and Lynn Sperry.

**Introductions-Commissioner Lowe**

Education Advisory Committee members, ADRE staff and public members introduced themselves and their affiliations.

**II. Minutes February 1, 2011**

Upon motion by Lin Ferrara, seconded by Holly Eslinger, the minutes of February 1, 2011 were unanimously approved.

**III. Update on New Testing Vendor-Carla Randolph**

Education Manager Randolph provided an overview of Pearson VUE, new testing vendor and Industry Day. See attached notes from Industry Day, February 1, 2011.

She reported that a meeting is scheduled for April 20 and 21<sup>st</sup> (Wednesday and Thursday) for Subject Matter Experts (SME) with Pearson VUE. The SME are: Bob Bohacik, Carla Bowen, Doug Groppenbacher, Leslie Latham, Christa Lawcock, Richard Tripp, Zoe Tsighis. The Education Manager reported on the testing statistics and issues of concern dealing with scheduling the examination. Pearson VUE is doing an assessment to more adequately address this issue.

Member Hogan asked if applicants can schedule by internet and/or phone. He stated that he has had some complaints regarding the Tucson test site. The testers claim that they can hear presentations happening in the next room at the test site. Esther Hogan stated that this issue has been resolved after speaking with the Tucson Association of REALTORS® (test site).

Commissioner Lowe reported on the examination performance and school rankings. She stated that the Exam Performance Summary Report (EPS) is available with Pearson VUE and reflects the pass/fail ratios of applicants and school performance.

Member Hogan discussed whether or not this information should be published. He stated that in the past a decision was made not to advertise the results. Discussion ensued regarding the pro and cons of publishing this type of information. Member Hogan stated that he would be against publishing the number of students who took the exam. Member Jaffe stated that he believed that it would be beneficial to disseminate the information on all levels. Member Ferrera asked what if this was published as a "range" rather than a specific number. Discussion ensued as to accuracy of numbers, disclosure and the public's interpretation. Commissioner Lowe reported that there are some very dramatic fail statistics among the schools. The Department monitors the pass/fail ratios and has the authority to terminate the license of a school.

It was suggested that ADRE post on their website the process for requesting this type of information by making a public records request. Education Manager Randolph stated that ADRE does not have the authority to close the school based simply on its' fail ratio. It was suggested that the ADRE focus on monitoring the schools and advise the schools of their deficiencies so that they could be corrected. Final result of the discussion was that ADRE is not to publish the Exam Performance Summary Report but enhance regulatory capability for the Department. Member Hogan stated that he would like to see the National and State portions of the Exam Performance Summary report available individually.

**IV. Revised Course Application-ED-102-Commissioner Lowe/Carla Randolph**

Education Manager Randolph provided an overview on ED-102 (see attached). She reviewed the various items noted on the application. Additionally, she also provided additional information on qualifying criteria for the Instructor Development Workshop Instructor (IDW) requirements. Discussion ensued on the various qualifiers, etc.

**V. Real Estate School Supervision Audit Declaration Report**

Education Manager Randolph reported that 37 schools of 250 (approximately) schools did not respond to the Real Estate School Supervision Audit Declaration deadline. She stated that some went inactive and some have complied. A warning to the non-compliant schools was sent with the caveat that the matter will be forwarded to the Enforcement and Compliance Division by April 15, 2011.

**VI. Broker Office Policies Manual**

Education Manager Randolph reported that the draft Broker Office Policies Manual is currently with the Attorney General's Office for review. Commissioner Lowe stated that Member Eslinger led a group that worked on updating the Broker Office Policies Manual. Once ADRE receives the Attorney General's Office feedback, the manual will be distributed to the EAC members. Once approved, it will be published on the ADRE website. The timeframe to have the manual available is within the next three weeks.

**VII. Volunteer Monitor Program**

Education Manager Randolph reported that the Division has been very busy and two monitoring assignments were completed. Member Bass stated that an Informational Alert should go out

requesting volunteers for the Monitor Program. It was suggested that the Education Manager make contact with the current volunteers by email and advise them that the program is still alive. Also it was suggested that prelicensure classes be monitored. Discussion ensued regarding schools getting a copy of the monitor report.

**VIII. Review Education Division Monthly Report (Handout) –Carla Randolph**

Education Manager Randolph provided an overview of the monthly report for the Education Division. (See attached) EAC members provided kudos for the education division staff for their positive attitude and responsiveness to questions and telephone calls. Commissioner Lowe reported that the ADRE has instituted a process which allows the Salesperson and Broker the ability to scan their original applications and send it to [licensing@azre.gov](mailto:licensing@azre.gov) for processing.

This process is being beta tested with the Tucson office. As to the Tucson office, Commissioner Lowe reported there have been some real staffing challenges.

**IX. 2011 Legislative Update-Gretchen Conger**

Legislative Liaison Conger provided an overview on legislative issues. (See attached) She reported on bills individually which are currently awaiting the signature of the Governor and Bills still moving. She reported that the Budget for FY 2012 was passed.

**X. Upcoming-Commissioner Lowe**

Commissioner Lowe reported on the budget and that ADRE appropriations were approved for 2.9 million which will hamper the ADRE's ability to pursue some particular items. Commissioner Lowe reported that there is one other item (Personnel Reform) which may impact the ADRE. There were some changes in the State retirement system and furlough days for 2012 (which provides agencies the flexibility to address within the confines of their budget).

She reported on the ARELLO meeting which she attended in Florida. She stated that the issues that came to the forefront were unlicensed activity (trustee sales, Federal agencies, etc.) and advertising on social media.

**XI. Next EAC Meeting: June 14, 2011**

**XII. Other Matters - None noted.**

**XIII. Call to the Public-** Marti Barnewolt stated that they are hearing more and more about unlicensed activity.

**XIV. Adjournment -** A motion to adjourn was made by Bob Bass; seconded by Jon Kichen; passed unanimously at 12:04 p.m.

DATED THIS \_\_\_\_\_ OF JUNE, 2011

ARIZONA DEPARTMENT OF REAL ESTATE  
EDUCATION ADVISORY COMMITTEE

BY: \_\_\_\_\_

Commissioner Judy Lowe





Administration Date: 05/01/2011 To 05/31/2011

Exam Performance Summary Report

ARIZONA REAL ESTATE

Total Number of Registered Candidates: 518  
 Total Number of Tested Candidates: 505  
 Total Number of Absentees: 13  
 Total Number of Declined/Unable to Complete: 0  
 Total Number of Unknown Results: 0

Exam Level Code	Exam Level Name	First Time Takers					Retakers					Overall Statistics				
		Exams Given	Exams Passed	Exams Failed	Pass Rate	Fail Rate	Exams Given	Exams Passed	Exams Failed	Pass Rate	Fail Rate	Exams Given	Exams Passed	Exams Failed	Pass Rate	Fail Rate
09-AZ-C	AZ Cemetery Sales	7	7	0	100.00	0.00	0	0	0	0.00	0.00	7	7	0	100.00	0.00
09-AZ-E	AZ Membership Campground Sales	1	0	1	0.00	100.00	0	0	0.00	0.00	1	0	1	0.00	100.00	
09-AZ-B	AZ Real Estate Broker	49	37	12	75.51	24.49	14	6	42.86	57.14	63	43	20	68.25	31.75	
09-AZ-A	AZ Real Estate Sales	302	206	96	68.21	31.79	132	54	40.91	59.09	434	260	174	59.91	40.09	
Totals:		359	250	109	69.64	30.36	146	60	41.10	58.90	505	310	195	61.39	38.61	

v.b.



Administration Date: 04/01/2011 To 04/30/2011

Exam Performance Summary Report

ARIZONA REAL ESTATE

Total Number of Registered Candidates: 502  
 Total Number of Tested Candidates: 491  
 Total Number of Absentees: 11  
 Total Number of Declined/Unable to Complete: 0  
 Total Number of Unknown Results: 0

Exam Level Code	Exam Level Name	First Time Takers					Retakers					Overall Statistics				
		Exams Given	Exams Passed	Exams Failed	Pass Rate	Fail Rate	Exams Given	Exams Passed	Exams Failed	Pass Rate	Fail Rate	Exams Given	Exams Passed	Exams Failed	Pass Rate	Fail Rate
09-AZ-D	AZ Cemetery Broker	0	0	0	0.00	0.00	1	1	0	100.00	0.00	1	1	0	100.00	0.00
09-AZ-C	AZ Cemetery Sales	6	5	1	83.33	16.67	0	0	0.00	0.00	6	5	1	83.33	16.67	
09-AZ-B	AZ Real Estate Broker	48	35	13	72.92	27.08	15	8	7	53.33	46.67	63	43	20	68.25	31.75
09-AZ-A	AZ Real Estate Sales	274	197	77	71.90	28.10	147	59	88	40.14	59.86	421	256	165	60.81	39.19
Totals:		328	237	91	72.26	27.74	163	68	95	41.72	58.28	491	305	186	62.12	37.88

IXa

### Education Division Statistics - FY 2011

	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	6-month	Year-end
<b>APPLICATIONS</b>														
Applications Received	130	130	164	121	137	111	123	159	175	109	133		793	1492
Pending Applications	39	30	46	33	15	20	28	33	51	37	30		183	362
Applications Processed	99	119	154	124	122	95	95	126	124	117	156		713	1331
School	5	5	6	0	3	3	14	4	6	7	12		22	65
Course	56	55	49	40	37	20	36	56	47	33	38		257	467
Distance Learning	4	4	10	13	3	16	3	7	5	6	18		50	89
Instructor	31	51	85	71	66	51	36	54	63	67	80		355	655
Owners ST of Qualifications	3	4	4	0	3	5	6	5	3	4	8		19	45
<b>PROCESSING TIME</b>														
Original Approvals	11	10	8	8	8	8	7	13	10	11	11		53	104
Expedited Approvals	11	0	8	1	1	1	1	5	4	4	1		22	37
Complex	15	14	11	18	18	18	18	25	25	25	36		94	223
Average age of pending applications	11	10	9	9	9	9	9	11	11	11	11		57	109
<b>STATUS REPORT</b>														
Pending School Applications	0	1	0	0	2	1	1	2	3	6	1		1	0
Pending Course Applications	16	23	21	10	4	10	12	13	7	2	7		10	0
Pending Instructor Applications	17	4	15	6	5	5	11	16	21	14	8		5	0
Pending Distance Learning Applications	3	1	10	17	3	1	4	4	20	13	12		1	0
Pending Owner/Administrator Applications	2	1	0	0	1	1	0	1	0	2	2		1	0
Pending School Renewal Applications	0	0	0	0	0	1	0	0	1	0	0		1	0
Pending Course Renewal Applications	0	0	0	0	0	0	0	0	6	0	0		0	0
Pending Instructor Renewal Applications	0	0	0	0	0	1	0	0	0	2	0		1	0
Pending Distance Learning Renewal Applications	0	0	0	0	0	0	0	0	0	0	0		0	0
Pending Expedited Course Applications	0	0	0	0	0	0	0	0	0	0	0		0	0
Pending Expedited Instructor Applications	0	0	0	0	0	0	0	6	6	0	0		0	0
Number of Schools- Active Status (Includes Branches)	255	255	255	256	254	254	252	253	243	236	239		254	0
Number of Active-Status Courses	3366	3410	3432	3469	3482	3493	3517	3549	3523	3544	3570		3493	0
Number of Instructors	1459	1469	1465	1452	1454	1445	1352	1355	1297	1275	1272		1445	0
Education Audits Conducted	0	0	0	0	0	0	0	0	0	0	0		0	0
Volunteer Monitor Assignments	0	0	3	7	0	10	0	0	2	6	0		20	0
Number of 14 Day Course Notices Entered (not online)	0	0	0	0	0	0	0	85	867	154	181		0	0
Processing Time - Waivers	6.6	3.9	5.5	4.3	2.9	1.9	11	4	2.7	3.8	2.1		4	4
<b>GENERAL STATS</b>														
Number of Staff	3	3	3	3	3	3	3	3	3	3	3		18	27
Walk-ins	18	11	14	12	13	13	20	19	32	19	17		81	152
Phone Calls	754	683	750	807	673	580	700	671	643	621			4247	5618
E-Mails	225	102	214	184	174	171	230	255	304	254	410		1070	1859
Exams administered	595	679	500	471	518	448	328	479	557	491	509		3211	4575
Broker	63	89	68	70	98	88	48	73	78	63	63		476	675
Sales	525	581	424	389	417	355	279	401	474	421	438		2691	3845
Other	7	9	8	12	3	5	1	5	5	7	8		44	55

TXB

# Licensing Division Statistics - FY 2011

	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	6-month	Year-end
<b>ORIGINAL LICENSES</b>														
Total Original Licenses	373	125	296	390	348	321	312	318	377	347	326		3,533	3,533
- Sales	276	64	209	309	246	233	228	225	273	270	252		2,585	2,585
- Broker	59	8	48	44	72	53	47	49	56	42	33		511	511
- Entity	38	53	39	37	30	35	37	44	48	35	41		437	437
<b>RENEWALS</b>														
Total Renewals	388	400	352	362	269	308	351	349	429	418	562		4,188	4,188
- In-Office	15	23	13	12	14	7	11	20	18	18	19			170
- online	373	377	339	350	255	301	340	329	411	400	543		4,018	4,018
% Online	96%	94%	96%	97%	95%	98%	97%	94%	96%	96%	97%	#DIV/0!	96%	96%
<b>SALES RENEWALS</b>														
Total Sales Renewals	295	283	246	244	187	190	251	226	302	312	365		2,901	2,901
- In-Office	12	17	9	6	8	3	8	12	10	12	6		103	103
- online	283	266	237	238	179	187	243	214	292	300	359		2,798	2,798
% Online	96%	94%	96%	98%	96%	98%	97%	95%	97%	96%	98%	#DIV/0!	96%	96%
<b>BROKER RENEWALS</b>														
Total Broker Renewals	65	79	65	76	62	81	76	80	81	74	125		864	864
- In-Office	2	2	3	3	4	1	1	4	4	4	7		35	35
- online	63	77	62	73	58	80	75	76	77	70	118		829	829
% Online	63	97%	95%	96%	94%	99%	99%	95%	95%	95%	94%	#DIV/0!	96%	96%
<b>ENTITY RENEWALS</b>														
Total Entity Renewals	28	35	35	39	18	37	24	42	48	30	63		399	399
- In-Office	1	4	1	3	2	5	2	4	4	2	5		33	33
- online	27	31	34	36	16	32	21	38	44	28	58		365	365
% Online	96%	89%	97%	92%	89%	86%	88%	90%	92%	93%	92%	#DIV/0!	91%	91%
<b>BRANCH RENEWALS</b>														
Total Branch Renewals	0	3	6	3	2	2	1	1	1	2	9		30	30
- In-Office	0	3	0	0	0	0	0	0	0	0	1		4	4
- online	0	0	6	3	2	2	1	1	1	2	8		26	26
% Online	#DIV/0!	100%	0%	0%	0%	0%	0%	0%	0%	0%	11%	#DIV/0!	13%	13%
<b>HIRE / SEVER Actions</b>														
Total Hire/Sever Actions	3,185	3,065	2,940	1,267	1,285	1,204	1,739	2,961	3,405	1,839	2,535		25,425	25,425
- In-Office	171	150	181	203	191	182	246	180	190	154	171		2,019	2,019
- online	3,014	2,915	2,759	1,064	1,094	1,022	1,493	2,781	3,215	1,685	2,364		23,406	23,406
% Online	95%	95%	94%	84%	85%	85%	86%	94%	94%	92%	93%	#DIV/0!	92%	92%
<b>TRANSFER ACTIONS</b>														
Total Transfer Actions	133	79	200	722	65	312	123	93	115	195	117		2,154	2,154
- In-Office	6	15	19	203	16	12	21	13	16	20	12		353	353
- online	127	64	181	519	49	300	102	80	99	175	105		1,801	1,801
% Online	95%	81%	91%	72%	75%	96%	83%	86%	86%	90%	90%	#DIV/0!	84%	84%
<b>PERSONAL INFORMATION CHANGES</b>														
Total Personal Information Changes	1,963	2,029	1,577	1,485	1,618	1,702	2,077	1,843	1,979	1,885	1,465		19,623	19,623
- In-Office	25	26	13	52	36	15	41	26	37	46	13		330	330
- online	1,938	2,003	1,564	1,433	1,582	1,687	2,036	1,817	1,942	1,839	1,452		19,293	19,293
% Online	99%	99%	99%	96%	98%	99%	98%	99%	98%	98%	99%	#DIV/0!	98%	98%

**LICENSE CERTIFICATION**

Number of Request for License Certification	50	52	61	32	35	27	30	25	33	35			380	380
Number of processed License Certification	73	65	49	42	36	33	14	28	29	28			397	397
Recertification of Education	11	8	9	21	11	10	6	2	7	10	2		97	97
Experience Verifications Processed	40	56	53	46	50	33	13	31	42	35	33		432	432
Experience Verifications Received			46	40	46	34	23	28	46	40	24		327	327

**CUSTOMER SERVICE SURVEYS**

Total Customer Service Surveys	252	93	277	233	287	220	119	177	227	146	210		2241	2241
- Excellent	244	92	268	217	276	211	110	174	222	144	205		2163	2163
- Good	8	1	8	16	11	8	9	3	5	2	5		76	76
- Neutral			1			1					0		2	2
- Bad											0		0	0
% "Excellent" and "Good"													100%	100%

**PHOENIX OFFICE**

Number of Phone Calls	623	1734	1718	2027	1582	1442	1822	1301	1477	1390			9126	15116
Number of Walk-Ins	1512	712	842	562	697	643	793	703	722	704	714		8604	8604
Number of Transactions Processed	1151	605	706	499	595	585	725	656	681	667	675		7545	7545

**TUCSON OFFICE**

Number of Phone Calls	89	267	320	283	239	300	60	279	324	132			1837	2293
Number of Walk-Ins	78	86	91	103	51	117	35		117	86	84		561	848

**APPLICATION PROCESSING TIME (in days)**

Original License (simple)	1	1	1	1	1	1	1	1	1	1	1.6		12	12
Original License (disclosures)	3	5	0	1	0	4	3						16	16
All Other Apps (simple)	2	2	2	2	2	3	10	2	2	2			29	29
Number of Mailed Applications Received			133	117	93	90	126	97	163	112				
Pending Mailed Applications(Phx or Tuc)	15	5	0	4	0	0	23	4	4	0			0	0
Number of Name Approvals Received			77	65	55	46	102	75	91	61				
Name Approval Forms Pending	0	1	0	9	7	4	7	4	5	11			4	0
Number of E&C Orders Rcv'd (start Oct.)			0	42	70	68	54	48	53	35				
E&C Division Orders Pending Process	5	4	0	0	3	2	5	2	5	3			2	0
Clearance Cards sent to DPS for review		4	7	17	9	15	13	14	19	10				
Fingerprint Cards pending review	25	30	0	0	0	0	0	0	0	0	0	0	0	0
Emails not responded to (collective in folders)	10	0	0	0	4	6	12	3	7	10			52	52
Phone Calls not responded to	7	10	3	0	5	2	0	0	0	0			27	27
Broker Entity Applications/Scans Pending	8	0	2	6	2	3	2	1	3	4			3	0
Internet emails answered	99	156	187	123	147	158	63						870	933



# ADRE MODEL BROKER'S POLICY AND PROCEDURE MANUAL

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For Arizona Real Estate, Cemetery, and Membership  
Camping Salespersons and Brokers

Developed by the Broker Office Policies Model Manual Committee  
Holly Eslinger, Tom Fannin, C. Dale Hillard, Michelle Lind, and Jan Steward

May 2011

# ADRE Model Broker's Policy and Procedure Manual

	Page Numbers
TABLE OF CONTENTS	2 - 6
INTRODUCTION	7
Notice of Disclaimer	7
DEFINITIONS	8
ADRE REQUIREMENTS	9
Office Policy Manual	9
COMPANY POLICIES	10
Advertising	10
Agency Relationships	11
Annual 1099 Report	11
Anti-Trust Compliance	11
Assistants and Teams	12
Association Membership	12
Broker Signature Requirements	12
Authorized Signatures	12
Business Relationships/Vendor Referral Policy (RESPA)	13
Commissions	13
Collection of Commissions	13
Payment of Commissions	13
Deferred Commissions	14

Commissions Shared Between or Among Sales Associates	15
Commission Disputes	15
Commission Rate(s) Schedule	15
Compensation Schedule	15
Out of State/Out of Area Co-Brokerage	16
Referral and Finder's Fees	16
Customer Care (Duties to Clients and Non-Clients)	16
Representing Clients	16
Client Contact & Appointments	17
Fiduciary Duties to the Client	17
Obligation to the Non-Client (Duty to Deal Fairly)	17
Disclosure Policy and Documents	19
Affidavit of Disclosure	19
Agency Forms	20
Airport Disclosure	20
Buyer Advisory	20
City Ordinance Compliance	20
Dangerous Drug Lab Disclosure	20
Fissure Maps	21
Lead Based Paint	21
Pool Barriers	21
Seller's Property Disclosure Statement	21
Superfund & WQARF	22
Employee (Additional Considerations for Unlicensed Office Staff)	22

Equal Opportunity Employer	23
Fair Housing	23
Harassment	23
Independent Contractor vs. Employees (Agreement)	24
Insurance	24
Automobile	24
Errors & Omissions	25
Health and Life	25
General Liability	25
Internet/Websites/Social Media/Blogs	26
License Renewal	26
Licensee Activity	27
Address Changes	27
Alcohol/Illegal Drug Use	27
Areas of Expertise	27
Authorized and Unauthorized Real Estate Activities	28
Company Meetings	28
Credit Reports	28
Dispute between Sales Associates	29
Dress Code	29
Earnest Money	29
Electronic/Digital Signatures	30
Hiring	30
Illness or Injury	30

Leases	31
Multiple Listing Service (MLS)	31
Open Houses	31
Partnership Agreements between Sales Associates	31
Personal Safety	31
Pre-Possession and Post-Possession	32
Property Management	32
Request for Information or Documents by Subpoena or Government Officials	36
Sales Associate Expenses	36
Short Sales	36
Signs	37
Smoking	37
Submission of Documents	37
Termination Policy	37
Use of Transaction Management System	38
Unlicensed Assistants	38
Vacations/Out of Town	39
Voluntary Office Romances	39
Offers	40
Presenting Offers	40
Multiple Offers	40
Rejected Offers	40
Privacy Policy/Data Security	40

Sales Financing Alternatives	41
Wrap-around, Carry-back or Subordinate Financing	41
Special Programs	41
Social Media	41
Transaction Paperwork and Management	41
Listings	41
Sales	42
Leases	42
Cancellations	42
Maintenance of Transaction Files	43
Transaction Logs	43
Trust Accounts	45
Weapons Law	46

# ADRE Model Broker's Policy and Procedure Manual

## INTRODUCTION

The ADRE Model Broker's Policy and Procedure Manual ("Manual") has been created to provide an example of the written policies, procedures and systems that a Real Estate Broker is required to establish and enforce pursuant to A.A.C. R4-28-1103.

Brokers should carefully consider the needs of their individual brokerages and their employees, both licensed and unlicensed, when creating their written policies, procedures and systems. Written policies, procedures and systems should provide employees/sales associates with an understanding of the expectations of the Broker and practical information on how the brokerage operates.

The Manual is intended to serve as a model only; Brokers are not required to use the form or substance contained in the Manual. Brokers may adopt any portion of the Manual that is relevant to their brokerages and should adapt the Manual to address the specific needs of their brokerage.

### Notice of Disclaimer

The requirements set forth in this model are based upon a practical application of Arizona laws, rules, and custom and are not intended to provide legal advice. From time to time, laws, rules, forms, and requirements referenced in this manual may change. Neither the Real Estate Commissioner nor any division, officer or employee of the Department of Real Estate warrants the accuracy, reliability or timeliness of any information in this model manual, and will not be responsible or liable for any loss, consequence, or damage resulting directly or indirectly from reliance on the accuracy, reliability, or timeliness of the information. Information in this model may have been derived from or repeated from other sources and may be applicable or not. The documents and materials found or referenced here may have been revised or replaced since the last printing of this model manual. Any person or entity that relies on information obtained from this manual does so at the person's or entity's own risk. The user assumes the responsibility of verifying any materials used or relied on.

## DEFINITIONS

Definitions of many terms are found in the real estate law book. In addition to terms defined in A.R.S. § 32-2101, 32-2171, and A.A.C. R4-28-101, the following terms appear in this manual which are defined below:

**A.A.C.** - Arizona Administrative Code (unofficially, the Commissioner's Rules).

**ADRE** - Arizona Department of Real Estate.

**AAR** - Arizona Association of REALTORS®.

**A.R.S.** - Arizona Revised Statutes

**Broker** – A company's designated broker.

**Company** – (Company name here)

**D.B.A./dba** – Doing Business As name

**Employing Broker** - The self-employed broker or real estate entity to which the Sales Associates are licensed.

**Listing** – An employment contract to represent a seller in the marketing of the seller's property.

**Buyer-Broker Agreement** – An employment contract to represent a buyer in the intended purchase of property.

**MLS** – local multiple listing service.

**NAR** - NATIONAL ASSOCIATION OF REALTORS®.

**RESPA** – Real Estate Settlement Procedures Act

**Sales Associate** - A licensed salesperson or associate broker working with the company as either an employee or an independent contractor.

**SPDS** - Seller's Property Disclosure Statement.

**SPS** – ADRE Substantive Policy Statement:  
(<http://www.azre.gov/LawBook/SubstantivePolicyStatements.aspx>)

## ADRE REQUIREMENTS

### Office Policy Manual

Effective August 6, 2002, Commissioner's Rule R4-28-1103 was adopted that requires a broker to establish and enforce written policies, rules, procedures, and systems to:

1. Review and manage transactions requiring a salesperson's or broker's license; and use of disclosure forms and contracts. For real estate brokers, this includes real estate employment agreements under A.R.S. § 32-2151.02.
2. Manage the filing, storing, and maintenance of transaction documents, handling trust funds, and use of unlicensed assistants by a salesperson or broker.
3. Oversee delegation of authority to others to act on behalf of the broker.
4. Familiarize salespersons and associate brokers with the requirements of federal, state, and local laws relating to the practice of real estate (or the sale of cemetery property or membership camping contracts, if applicable).
5. Review and inspect documents that may have a material effect upon the rights or obligations of a party to a transaction and advertising and marketing by the broker and by salespersons, associate brokers, and employees of the broker.

Sales Associates are obligated to remain licensed, abide by all laws and rules and abide by the broker's policies and procedures.

It shall be the responsibility of the broker, when out of the office for 24-hours or more, or unable to perform normal daily duties, to designate in writing the authority to a licensee the company employs, or to another designated broker, to handle the day to day operation of the company. A salesperson may not hire or fire other licensees. Each designation may not exceed 30 days (A.R.S. § 32-2127(D)).

# COMPANY POLICIES

## Advertising

This section should cover all advertising media, including the Internet and Social Media, and should contain:

- A review of advertising for Fair Housing compliance and use of the Fair Housing logo.
- A review of advertising for compliance with Regulation Z and Truth in Lending laws.
- Instructions regarding the usage of Company logo, name, and phone numbers on advertising.
- Policy for Broker review before placement of advertising.
- Instructions regarding placement of Broker name and logo must be prominently placed at the top on each web page. If a broker uses a trade name, the legally licensed name must also be prominently displayed.

A.A.C. R4-28-502 provides, in part:

- A Sales Associate shall not advertise property in a manner that implies that no salesperson or broker is taking part in the offer for sale, lease, or exchange.
- A Sales Associate advertising the Sales Associate's own property for sale, lease, or exchange shall disclose the Sales Associate's status as a salesperson or broker, and as the property owner by placing the words "owner/agent" in the advertisement.
- A Sales Associate shall ensure that all advertising contains accurate claims and representations, and fully states factual material relating to the information advertised. A Sales Associate shall not misrepresent the facts or create misleading impressions.
- A Sales Associate shall ensure that all advertising identifies in a clear and prominent manner the employing broker's legal name or the dba name contained on the employing broker's license certificate.
- A Sales Associate who advertises property that is the subject of another person's real estate employment agreement shall display the name of the listing broker in a clear and prominent manner. Note: The Sale Associate is not required to obtain a listing broker's permission prior to advertising such property.
- Before placing or erecting a sign giving notice that specific property is being offered for sale, lease, rent, or exchange, a Sales Associate shall secure the written consent of the property owner, and the sign shall be promptly removed upon request of the property owner.
- The Sales Associate acknowledges that the use of an electronic medium, such as the Internet or web site technology, that targets residents of this state with the offering of a property interest or real estate brokerage services pertaining to property located in this state constitutes the dissemination of advertising and is subject to the same policies and procedures as other media.

## Agency Relationships

This section should clearly describe the company's policy on agency. The following are examples of different forms of agency the company may implement:

- The Company represents the seller/landlord exclusively when acting as the listing agent but not the selling agent.
- The Company represents the buyer/tenant exclusively when acting as the selling/leasing agent and not the listing agent.
- The Company represents both the seller/landlord and buyer/tenant as a dual agent (Limited Representation Disclosure Form required) when there is only one Sales Associate or two Sales Associates from the company. Agency is established with the Broker, not the Sales Associate.
- The Company will cooperate and co-broke with a selling/leasing agent from any other brokerage that represents the seller/landlord exclusively or represents the buyer/tenant exclusively.
- The Company DOES or DOES NOT allow "sub-agency."

Pursuant to A.R.S. § 32-2153(A)(2), the ADRE may sanction a licensee if the licensee has "[a]cted for more than one party in a transaction without the knowledge or consent of all parties to the transaction."

A Sales Associate or Broker may not accept compensation from or represent more than one party without prior written consent from all parties (A.A.C. R4-28-1101(F)).

## Annual 1099 Report

This section should cover:

- What IRS 1099 forms will include and exclude (such as any deductions) and who pays deductions.
- Earnings that are paid out of escrow or assigned should be included on the 1099 form.

## Anti-Trust Compliance

This section should include:

- Compliance with the anti-trust laws, describing the conduct and results that are to be avoided, such as Sales Associates and employees must take special care to avoid discussion with employees and Sales Associates of competing firms regarding the commission policy of the Company that could be construed to be agreements or conspiracies to fix, establish prices or otherwise restrain competition in violation of state and federal anti-trust laws.

For information from NAR on Antitrust and the Real Estate Brokerage Firm:

[www.realtor.org/letterlw.nsf/pages/0802antitrust?OpenDocument&Login](http://www.realtor.org/letterlw.nsf/pages/0802antitrust?OpenDocument&Login)

## Assistants and Teams

This section should include:

- The Broker's policy concerning Personal Assistants, permissible and prohibited activities, compensation, equipment/office space, withholding tax, worker's compensation insurance, Company liability.
  - For information on the ADRE SPS regarding unlicensed assistants:  
[www.azre.gov/LawBook/Documents/SPS\\_Documents/SPS\\_2005.04\\_Unlicensed\\_Assistants.pdf](http://www.azre.gov/LawBook/Documents/SPS_Documents/SPS_2005.04_Unlicensed_Assistants.pdf)
- If used, team names must identify in a clear and prominent manner the employing broker's legal name or the dba name contained on the employing broker's license certificate and cannot give the appearance of a real estate company. In order to avoid confusion team names should include the word "team" and not include words such as Company, Group or Associates. Team names should not be registered as legal business entities with the Arizona Corporation Commission. It is the Broker's responsibility to approve team names and advertisements, and ensure compliance with A.A.C. R4-28-502.

## Association Membership

This section should include:

- Whether membership in a business or trade association is required or recommended and, if so, which associations or organizations and who is responsible for fees or dues.
- What requirements the sales associates shall comply with as a member.

## Broker Signature Requirements

### Authorized Signature

This section should include:

- A description in writing of who is authorized to sign what documents on behalf of the Company.
- Whether only the Designated Broker, or the Designated Broker's designee/authorized branch manager, or someone else is authorized to sign documents
- For information on duties that may be delegated to the Branch Office Manager or other designee, see A.R.S. § 32-2127 and A.A.C. R4-28-304.

The documents may include:

- Assignment of Commissions
- Commission Changes
- Escrow Changes
- License Renewal

- Listing Releases
- Lockbox Vendor Agreement
- Mutual Cancellations
- Sales Associates holding only a salesperson license may not sign escrow instructions or other documents that approve compensation or direct how compensation is to be paid for licensed activity (A.A.C. R4-28-304 (B)(1)(c)and (d), and (B)(2)(a).

## **Business Relationships/Vendor Referral Policy (RESPA)**

This section should include:

- Identification of relationships the Company has established with other companies that require disclosure under RESPA.
- When disclosure of a relationship is required and how it is to be made.
- The Company policy concerning Sales Associates' referrals to clients or customers, including any required disclosure of compensation.

RESPA Dos & Don'ts for Brokers: [www.aaronline.com/documents/dos&donts.pdf](http://www.aaronline.com/documents/dos&donts.pdf)

## **Commissions**

### **Collection of Commissions**

This section should cover:

- Costs of recovering any commissions and who pays for the costs: the Company, Sales Associate, or someone else.
- Division of any forfeited earnest money deposit.
- Reduction of commission negotiated by the sales associate, permissions required, etc.

### **Payment of Commissions**

This section should cover:

- Only licensed Sales Associates can be paid a commission.
- A licensed real estate Sales Associate can only be paid by the Sales Associate's Broker.
- That commissions are paid to the Sales Associate in accordance with the Associate's commission agreement with the Company.
- Whether the Broker of the Company has authorized the escrow company to pay commissions directly to the Sales Associate on the Broker's behalf.
- What date determines which month the transaction closed (if commission on a transaction is determined on a per monthly basis).
- What fees will be deducted from the commission (such as Errors and Omissions Insurance (E & O)).

- If commission checks received need to clear the bank before payment to the Sales Associate is made.

Pursuant to A.R.S. § 32-2155:

- A broker shall employ and pay only active licensees for performing acts which require a real estate license.
- A licensee shall accept employment and compensation as a licensee only from the legally licensed broker to whom the licensee is licensed.
- If the licensee is licensed through a professional corporation or a professional limited liability company, the employing broker may pay and the licensee may receive compensation only through the licensed professional corporation of which the licensee is an officer and shareholder or the licensed professional limited liability company of which the licensee is a member or manager.

All shareholders, members or managers of a licensed professional corporation or licensed professional limited liability company must hold active real estate licenses (A.R.S. § 32-2125(B)).

The Company is responsible for the acts of all Sales Associates and other employees acting within the scope of their employment (A.A.C. R4-28-1103(D)).

**A Sales Associate's professional corporation (PC) or professional limited liability company (PLLC) is not a legal business entity under which a Sales Associate may conduct real estate activity, though it may be used for the payment of commissions. Commissions are to be paid by the broker to the licensed PC or PLLC, and the PC or PLLC may only pay ADRE licensed registered members of that PC or PLLC licensed under the paying broker; not licensees who are non members, nor un-licensed individuals.**

Pursuant to SPS 2005.08:

When a Sales Associate has rightfully earned a commission while in the employ of a broker, and in accordance with their agreement, that broker shall pay the licensee, even though the licensee may have left the employ of that broker.

### **Deferred Commissions**

This section should cover:

- How any deferred commissions received will be paid to sales associates.
- If a beneficial interest can be assigned to a sales associate and under what circumstances.
- How assigned commissions are handled with regard to the Internal Revenue Service, Form 1099's, etc.

## **Commissions Shared Between or Among Sales Associates**

This section should cover:

- How shared commissions will be handled.
- What type of agreement should be drawn.
- Whether broker approval is required.
- What happens if a commission is shared without broker approval (e.g., who will receive it, whether verbal agreements are allowed, etc.).
- That shared commissions and referral fees paid to someone outside the Company are to be paid by the Company, not by the Sales Associate.

## **Commission Disputes**

This section should cover:

- How commission disputes between Sales Associates are to be handled, such as:
  - Whether there must be a written agreement and what happens when there isn't;
  - Will there be an internal arbitration process;
  - Whether the Broker will mediate or arbitrate the matter.
- If the Sales Associate takes a separate action outside the policies, who pays for any expense and, if unauthorized, what are the consequences.

**Pursuant to A.R.S. § 32-2152(B), the real estate Commissioner is precluded from entertaining complaints regarding the earning, splitting or non-payment of compensation.**

## **Commission Rate(s) Schedule**

Commission rate(s) schedules are independently determined by each broker. This section should cover:

- Any minimum acceptable cooperating commission accepted without prior approval of the Broker when representing buyers.
- Any minimum acceptable listing commission without prior approval of the Broker.

## **Compensation Schedule**

This section should cover:

- Sales Associate compensation splits, schedules, and timing.
- Errors and Omissions Insurance deductions and whether they are related to the Sales Associate's compensation level.
- Compensation paid after termination.
- How bonuses are to be paid and divided.

## **Out of State/Out of Area Co-Brokerage**

This section should cover:

- How broker will cooperate with out of state/area Sales Associates and Brokers when offers are presented.
- How broker will compensate with out of state/area Sales Associates and Brokers when offers are presented.
- Commission agreements must be in writing.

Compliance with A.R.S. § 32-2163 is required to enter into a cooperating agreement with non-Arizona real estate brokerages. All negotiations in Arizona and with people owning property in Arizona must be conducted through the Arizona Broker. The full text of the statute can be found

at:[www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/32/02163.htm&Title=32&DocType=ARS](http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/32/02163.htm&Title=32&DocType=ARS)

## **Referral and Finder's Fees**

This section should cover:

- How outgoing referral fees should be paid:
  - that they must be paid only to a licensed broker
  - whether a copy of that broker's license must be included in the transaction file
  - that no fees may be paid to unlicensed people or entities
- How incoming referral fees are handled:
  - that they are paid only to the Company
  - if and how they will be split with the Company
  - whether a form is required to be used with either incoming or outgoing referrals
- Whether the Company pays finder fees to unlicensed tenants of apartment complexes. (see A.R.S. § 32-2176 for guidance).

## **Customer Care (Duties to Clients and Non-Clients)**

### **Representing Clients**

A.A.C. R4-28-802 and R4-28-1101 provide guidance on duties a licensee has to his/her clients. Unlicensed assistants may be used to perform only limited –non-licensed – services (See Substantive Policy Statement 2005.04).

This section should cover:

- What the Sales Associate's responsibilities are when acting as a buyer's agent, such as, to be present during all showings, inspections, document signings, etc.

- What the Sales Associate's responsibilities are in regard to keeping clients informed.
- Which responsibilities are required in new home searches and transactions.

### **Client Contact and Appointments**

This section should cover:

- Company's expectations of Sales Associates with regard to professional courtesies.
- How difficult relationships should be handled and whether and under what conditions clients may be reassigned by the Broker to another Sales Associate.
- How Sales Associates should handle the inability to keep an appointment, with either the seller or buyer or both.

### **Fiduciary Duties to the Client**

This section should include:

- The Broker's and Sales Associates' responsibilities when acting as agent for a client. They owe duties of confidentiality, accountability, reasonable skill and care, loyalty, obedience (lawful), accounting, and disclosure.

### **Obligation to the Non-Client (Duty to Deal Fairly)**

This section should include:

- The Broker's/Sales Associate's obligation to disclose in writing to all other parties, **prior to entering into a binding agreement**, including, but not limited to:
  - Any information that materially and adversely affects the consideration to be paid by any party to the transaction.
  - That the seller/lessor is, or may be, unable to perform.
  - That the buyer/lessee is, or may be, unable to perform.
  - Any material defect existing in the property being transferred.
  - The possible existence of a lien or encumbrance on the property being transferred.
  - That the Broker/Sales Associate is the principal or has a financial or beneficial interest in the property
  - That the Broker/Sales Associate is related to one of the principals
  - That the Broker/Sales Associate has a conflict of interest

Pursuant to A.A.C. R4-28-1101:

- A Sales Associate owes a fiduciary duty to the client and shall protect and promote the client's interests **and deal fairly with all parties to the transaction.**
- A Sales Associate participating in a real estate transaction shall disclose in writing to all other parties any information the licensee possesses that materially or adversely affects the consideration to be paid by any party to the transaction, including:

1. Any information that the seller or lessor is or may be unable to perform;
  2. Any information that the buyer or lessee is, or may be, unable to perform;
  3. Any material defect existing in the property being transferred; and
  4. The existence of a lien or encumbrance on the property being transferred.
- A Sales Associate shall expeditiously perform all acts required by the holding of a license. A Sales Associate shall not delay performance, either intentionally or through neglect.
  - A Sales Associate shall not allow a controversy with another licensee to jeopardize, delay, or interfere with the initiation, processing, or finalizing of a transaction on behalf of a client. This prohibition does not obligate a Sales Associate to agree to alter the terms of any employment or compensation agreement or to relinquish the right to maintain an action to resolve a controversy.
  - A Sales Associate shall not act directly or indirectly in a transaction without informing the other parties in the transaction, in writing and before the parties enter any binding agreement, of a present or prospective interest or conflict in the transaction, including that the:
    1. Sales Associate has a license and is acting as a principal;
    2. Purchaser or seller is a member of the salesperson's, broker's, or designated broker's immediate family;
    3. Purchaser or seller is the salesperson's or broker's employing broker, or owns or is employed by the salesperson's or broker's employing broker; or
    4. Salesperson or broker, or a member of the salesperson's or broker's immediate family, has a financial interest in the transaction other than the salesperson's or broker's receipt of compensation for the real estate services.
  - A Sales Associate shall not accept compensation from or represent more than one party to a transaction without the prior written consent of all parties.
  - A Sales Associate shall not accept any compensation, including rebate or other consideration, directly or indirectly, for any goods or services provided to a person if the goods or services are related to or result from a real estate transaction, without that person's prior written acknowledgement of the compensation.
  - The services that a Sales Associate provides to a client or a customer shall conform to the standards of practice and competence recognized in the professional community for the specific real estate discipline in which the salesperson or broker engages.
  - A Sales Associate shall not undertake to provide professional services concerning a type of property or service that is outside the Sales Associate's field of competence without engaging the assistance of a person who is competent to provide those services, unless the Sales Associate's lack of expertise is first disclosed to the client in writing and the client subsequently employs the salesperson or broker.
  - A Sales Associate shall exercise reasonable care in ensuring that the salesperson or broker obtains information material to a client's interests and relevant to the contemplated transaction and accurately communicates the information to the client. A salesperson or

broker is not required to have expertise in subject areas other than those required to obtain the salesperson's or broker's license.

- A Sales Associate shall take reasonable steps to assist a client in confirming the accuracy of information relevant to the transaction.
- A Sales Associate shall not:
  1. Permit or facilitate occupancy in a person's real property by a third party without prior written authorization from the person; or
  2. Deliver possession prior to closing unless expressly instructed to do so by the owner of the property or property interest being transferred.
- A Sales Associate shall recommend to a client that the client seek appropriate counsel from insurance, legal, tax, and accounting professionals regarding the risks of pre-possession or post-possession of a property.

Pursuant to A.A.C. R4-28-802:

- Upon execution of any transaction document a salesperson or broker shall, as soon as practical, deliver a legible copy of the signed document and final agreement to each party signing the document.
- During the term of a listing agreement, a salesperson or broker shall promptly submit to the salesperson's or broker's client all offers to purchase or lease the listed property.
- Upon receiving permission from the seller or lessor, the salesperson or broker acting on behalf of the seller or lessor may disclose to all offerors or their agents the existence and terms of all additional offers on the listed property.
- The salesperson or broker shall submit to the client all offers made prior to closing and is not released from this duty by the client's acceptance of an offer unless the client instructs the salesperson or broker in writing to cease submitting offers or unless otherwise provided in the listing agreement, lease, or purchase contract. The salesperson or broker may voluntarily submit offers to the seller or lessor regardless of any limitations contained in the listing agreement and may submit offers after the listing agreement is terminated.

## Disclosure Policy and Documents

### Affidavit of Disclosure

This section, for transactions involving (five) 5 or fewer parcels located in an unincorporated area, should include use of the Affidavit of Disclosure:

[www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/33/00422.htm&Title=33&DocType=ARS](http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/33/00422.htm&Title=33&DocType=ARS) (Valid until 10/1/11)

[www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/33/00422.01.htm&Title=33&DocType=ARS](http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/33/00422.01.htm&Title=33&DocType=ARS) (Effective 10/1/11)

## Agency Forms

This section should include:

- Whether, and under what circumstances, an agency form, dual agency form, limited representation agreement, or buyer's broker agreement shall be used.

## Airport Disclosure

This section should include:

- The Seller is required to inform the buyer that a property is within the area of a military or other airport.
- Where the Sales Associate may obtain maps defining the areas affected, including the Department's Web site ([www.azre.gov](http://www.azre.gov)).
- Military airport disclosure requirements for property in the "territory in the vicinity of a military airport" A.R.S. §§ 28-8483 and 28-8484.  
[www.azleg.state.az.us/ars/28/08483.htm](http://www.azleg.state.az.us/ars/28/08483.htm) and  
[www.azleg.state.az.us/ars/28/08484.htm](http://www.azleg.state.az.us/ars/28/08484.htm)
- Public airport disclosure requirements for property in the "territory in the vicinity of a public airport" A.R.S. § 28-8486.  
[www.azre.gov/PUBLIC\\_INFO/Airport\\_Maps/Territory\\_in\\_the\\_Vicinity\\_of\\_a\\_Public\\_Airport.html](http://www.azre.gov/PUBLIC_INFO/Airport_Maps/Territory_in_the_Vicinity_of_a_Public_Airport.html)
- Maps depicting noise level contours and airport traffic airspace may also be found at:  
[www.azre.gov/PUBLIC\\_INFO/Airport\\_Maps/Territory\\_in\\_the\\_Vicinity\\_of\\_a\\_Public\\_Airport.html](http://www.azre.gov/PUBLIC_INFO/Airport_Maps/Territory_in_the_Vicinity_of_a_Public_Airport.html)

## Buyer Advisory

This section should include whether, or under what circumstances, Sales Associates should use the ADRE "Buyer Advisory": [www.aaronline.com/documents/buyer\\_advisory.aspx](http://www.aaronline.com/documents/buyer_advisory.aspx)

## City Ordinance Compliance

This section should include:

- What forms does the Company require to be carried by Sales Associates, i.e., Surprise – city map showing military airport.
- What are the consequences if the Sales Associate is cited.

## Dangerous Drug Lab Disclosure

- A licensee may not face criminal, civil or administrative sanctions for failing to disclose the property sold or leased was: the site of a death or a felony, occupied by a person

exposed to a disease that is not known to be transmitted through common occupancy, or located near a sex offender, pursuant to A.R.S. § 32-2156; however

- A licensee must disclose if the property is or was the site of a Dangerous Drug Lab pursuant A.R.S. § 12-1000:  
[www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/12/01000.htm&Title=12&DocType=ARS](http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/12/01000.htm&Title=12&DocType=ARS)

### **Fissure Maps**

- A.R.S. §32-2117: [www.azre.gov/PublicInfo/Fissures.aspx](http://www.azre.gov/PublicInfo/Fissures.aspx)

### **Lead Based Paint**

This section should include:

- The requirement by the U.S. Department of Housing and Urban Development (HUD) requires that every seller of residential property built prior to 1978 disclose to the potential buyer/tenant the possibility for or the existence of lead based paint on the property.
- That every buyer/tenant is to receive a copy of the pamphlet "Protect Your Family From Lead In Your Home" and the Lead Based Paint Disclosure Addendum, available from this URL: [www.hud.gov/offices/lead/enforcement/disclosure.cfm](http://www.hud.gov/offices/lead/enforcement/disclosure.cfm)
- Buyer initials or signatures are required to acknowledge receipt of notice.
- Sales Associates are required to initial and sign the receipt.

HUD Lead Based Paint Information and Brochure:

[www.hud.gov/offices/lead/healthyhomes/lead.cfm](http://www.hud.gov/offices/lead/healthyhomes/lead.cfm)

### **Pool Barriers**

This section should include

- Ensuring that the seller comply with provisions of A.R.S. § 36-1681(E) by providing the buyer, lessee, or renter with a notice, approved by the Department of Health Services, explaining safety education and responsibilities of pool ownership:  
[http://azdhs.gov/phs/oeh/pool\\_rules.htm](http://azdhs.gov/phs/oeh/pool_rules.htm)

### **Seller's Property Disclosure Statement**

This section should include:

- Whether the Company requires all sellers complete a Seller's Property Disclosure Statement ("SPDS") on every listing, including properties listed for sale "AS IS"; any exceptions (perhaps for new construction not complete at the time of listing,

estate sale, bank-owned property, family trust, etc., and how to indicate in the purchase contract that the seller is not providing a SPDS).

- How the Sales Associate is to handle any questions that are not answered, appear to be inaccurate, inconsistencies and red flags, or if the seller refuses to complete the SPDS.

### **Superfund & Water Quality Assurance Revolving Fund (WQARF)**

This section should include:

- Information about areas that have been designated by the Federal Government and by the State of Arizona as environmentally impacted.
- Where information or maps regarding these areas can be obtained, such as from the Arizona Department of Environmental Quality Web site, [www.azdeq.gov](http://www.azdeq.gov).
- When and how to fully disclose to prospective buyers that a property is located in these areas.

### **Employees (Additional Considerations for Unlicensed Office Staff)**

All Employment Records must be maintained for five years (A.R.S. § 32-2151.01(A)).

This section may include information about:

- Benefits
- Insurance
- Paid Time Off
- Holidays
- Enforced Absences, i.e., Jury Duty, Military service
- Office Hours
- Personnel Files
- Salary and Wage Policy
- Payment of Salaries/Wages
- Payroll Deductions
- Performance Review
- Disciplinary Action

## Equal Opportunity Employer

This section should include:

- An affirmative statement concerning equal employment opportunities at the Company.

## Fair Housing

This section should include:

- A statement concerning compliance with the State and Federal Fair Housing Acts.
- Clear instructions on compliance with the State and Federal Fair Housing Laws and rules, including requirements for advertising, including:
  - A Sales Associate shall not discriminate against a person in making a real estate related transaction available or in the terms or conditions of a real estate related transaction because of race, color, religion, sex, national origin, handicap or familial status.
  - A Sales Associate shall not make, print or publish or cause to be made, printed or published any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin, or an intention to make such a preference, limitation or discrimination
  - Where the Fair Housing laws and rules can be found, for example:  
[www.hud.gov/offices/fheo/FHLaws/yourrights.cfm](http://www.hud.gov/offices/fheo/FHLaws/yourrights.cfm)  
[www.azag.gov/civil\\_rights/fairhousing/](http://www.azag.gov/civil_rights/fairhousing/)

## Harassment (Including Sexual Harassment and Harassment Based Upon Sex, Age, Disability, Race, National Origin, or Religion)

This section should include:

- A policy that is consistent with the Company's commitment to provide equal employment opportunities and a statement that the Company will not tolerate any form of harassment, including sexual harassment or harassment on the basis of age, disability, race, national origin, or religion.
- How harassment claims should be reported.
- How harassment claims will be investigated or handled.

## Independent Contractor vs. Employees (Agreement)

This section should include:

- The Sales Associate's standing as an Independent Contractor or Employee, including types of activities that may affect the Sales Associate's standing as perceived by the Internal Revenue Service, Arizona Department of Revenue or the Arizona State Compensation Fund.
- Whether a written Independent Contractors Agreement with the Company is required.
- A Sales Associate's status as an Independent Contractor does not change the requirement for a Sales Associate to work only on behalf of the employing broker and be supervised by the licensed broker. An Independent Contractor may not perform real estate activities independently of their broker.
- A Sales Associate may not independently conduct licensed real estate activities under a corporation, partnership or limited liability company, as such entities require a licensed broker and licensure with the Department of Real Estate.

NOTE: For federal tax purposes, the Internal Revenue Code (I.R.C. § 3508) provides a statutory classification for qualified real estate salespeople that allows their treatment as self-employed "statutory non-employees" for federal income and employment tax purposes. If the salesperson is a "statutory non-employee" the broker is not required to withhold federal taxes. To qualify for this "statutory non-employee" status, the real estate salesperson must, in part:

1. Be licensed as a real estate agent;
2. Receive substantially all compensation based on sales or other output, rather than the number of hours worked; and
3. Have a written contract with the brokerage firm that provides that the salesperson will not be treated as an employee for federal tax purposes.

## Insurance

### Automobile

In this section, the Broker should clarify:

- Who is responsible for providing transportation and who pays which expenses.
- If the Broker has minimum insurance requirements, and what the limits are.
- Any indemnification/hold harmless clauses the Broker may require.
- If the Company requires the Sales Associate to be an additional insured on the Company's policy.
- If the Company requires higher insurance level when clients are in the car.

## Errors & Omissions

This section should include:

- Who will obtain Errors & Omissions Insurance. Who is responsible for paying the premiums or, if pro-rated, what the Sales Associate's share may be and who absorbs any increase in the deductible or premium.
- Whether the Company requires alternative dispute resolution, mediation or arbitration to handle complaints.
- Does the Company require the Sales Associates to sign a formal Errors & Omissions Agreement.
- How does the Company provide for indemnification from the Sales Associates and/or the severance of a Sales Associate.
- Sales Associates should be cautioned that there are circumstances where E & O may not provide coverage, i.e., fraud, commercial environmental issues, transactions where Sales Associates act as a principal.
  - Does the Company's E & O coverage include Sales Associate owned property. What are the requirements for coverage?
  - What type of property does this include (residential, land, commercial, business opportunity)?
  - Is there a difference in the fee and who is responsible for payment?
- What the legal and complaint procedures will be with regard to the following:
  - Client/Customer Complaint Letters
  - Attorney Letters
  - Production of Records Subpoena
  - Lawsuit Subpoena
  - Arizona Department of Real Estate or Association of REALTORS® Complaints
  - Internal Revenue Service or Arizona Department of Revenue Tax Levy

## Health and Life

This section should include:

- Whether the Company provides health and/or life insurance.
- If the Company does provide health and/or life insurance, how the health and/or life insurance will be paid for.

## General Liability

This section should include:

- All Company's should carry General Liability Insurance.
- What is the Broker's position regarding whether the Sales Associates should obtain their own individual General Liability Insurance? If so, how much?

## Internet/Websites/Social Media/Blogs

This section should include:

### Internet

- Who is allowed to use Company computers.
- What can the computers be used for, i.e., personal vs. business.
- Does the Company have email service or is the Sales Associate responsible for their own email.
- Does the Company have a policy regarding the Sales Associates use of the Company's branded email.
- Does the Company have a policy on use of trademarks, i.e. REALTOR® on the Internet.

### Websites

- What is the Company policy about position of company name and logo on Sales Associates' websites?
- Pursuant to A.R.S. § 32-2101(2) and (48)(h) and A.A.C. R4-28-502(E), the licensed name of the broker must be clearly and prominently identified on all websites that are being used to offer brokerage services, or advertising specific property.
- Pursuant to A.C.C. R4-28-502(G), the designated broker is responsible for supervising all websites and advertising by the Company

### Social Media/Blogs

- How is "social media" defined and what activities will be covered by the policy?
- What expectation of privacy do the employees have in regards to their social media activity?
- What kind of content are sales associates/employees prohibited from posting?
- Will sales associates/employees be required to include disclaimers with the content they post?

## License Renewal

This section should include:

- Continuing education requirements
  - ADRE license renewal Information: <https://az.gov/webapp/dre>
- How license renewal periods are monitored.
- Recommendations for education can be suggested, i.e., continuing education or Graduate Realtor® Institute (GRI) classes, etc.

## Licensee Activity

### Address Changes

This section should include:

- Brokers and Sales Associates must notify the Department within 10 days of a change of (residence/ mailing) address, telephone number, and email.
- A Broker must notify the Department prior to relocating the business or changing its business/ mailing address, telephone number, and email.

### Alcohol / Illegal Drug Use

This section should include:

- Company Policy regarding alcohol in the workplace or Company sponsored activities
- Prohibition against illegal drug use

### Areas of Expertise

This section should include:

- What is the company position on working outside of area of expertise.
- What does company require as far as education for areas of expertise, i.e., CCIM for commercial.
- Does the company allow its Sales Associates to act as 3<sup>rd</sup> party negotiators (After Loan Originator License Requirements fulfilled)?
- The unauthorized activity by a Sales Associate who conducts real estate on behalf of anyone other than their employing broker is strictly prohibited.. For example, establishing or working for a separate legal entity for negotiation of short sales or conducting property management

Pursuant to A.A.C R4-28-1101(H), in part: A Sales Associate shall not undertake to provide professional services concerning a type of property or service that is outside the salesperson's or broker's field of competence without engaging the assistance of a person who is competent to provide those services, unless the salesperson's or broker's lack of expertise is first disclosed to the client in writing and the client subsequently employs the salesperson or broker.

Pursuant A.R.S. § 32-2155(C): A real estate broker or real estate salesperson shall not collect compensation for rendering services in negotiating loans secured by real property unless all of the following apply:

1. The broker or salesperson is licensed pursuant to title 6, chapter 9 or is an employee, officer or partner of a corporation or partnership licensed pursuant to title 6, chapter 9.
2. The broker or salesperson has disclosed to the person from whom the compensation is collected that the broker or salesperson is receiving compensation both for real estate brokerage, when applicable, and for mortgage broker services.
3. The compensation does not violate any other state or federal law.

### **Authorized and Unauthorized Real Estate Activities**

This section should cover areas of practice that Sales Associates are authorized or not authorized to participate in, or are required to have prior approval of Broker, such as:

- Sales, leases, or exchanges
- Residential, new, resale, commercial, industrial, multi-family, agricultural, or vacant properties
- Property management
- Short Sale
- Real Estate Owned properties (REO)
- Business opportunities
- FHA-VA-owned properties
- Attorney-in-fact/acting on a buyer's or seller's behalf
- Unsubdivided lands
- Loan Originator (reference Title 6, Chapter 9)

**Does the Company allow its Sales Associates to establish or work for separate legal entities, acting as a vendor on properties (ex. property maintenance, home staging, etc.)? Such legal entities may not conduct activities requiring a real estate license.**

### **Company Meetings**

This section should cover:

- The Broker's policy concerning Sales Associates' attendance at Company meetings.

### **Credit Reports**

This section may include:

- Federal guidelines dealing with credit reports and confidentiality concerns.
- How to respond to a customer/client request that a Sales Associate (other than those managing property) generate, review, fax, and/or handle a credit report for a client or customer or prospective client or customer.

## **Disputes between Sales Associates**

A licensee shall not allow a controversy with another licensee to jeopardize, delay, or interfere with the initiation, processing, or finalizing of a transaction on behalf of a client (A.A.C. R4-28-1101(D)). Any action for collecting compensation may be filed with a court of law; the Department of Real Estate has no jurisdiction over compensation disputes between licensees (A.R.S. § 32-2152).

This section should address disputes between or among Sales Associates and may include:

- Any written agreement or policy concerning how the dispute is to be resolved.
- Whether the matter will be mediated and if so, by whom.
- If unable to mediate an acceptable resolution, who will determine the outcome.
- What happens if a Sales Associate refuses to cooperate or fails to comply with any ordered or agreed conduct.
- Whether notice of the dispute must be given to the broker, including when and how the notice is to be provided.
- If a lawsuit is filed, who is responsible for judgments, damages, losses, costs, expenses, etc., incurred by Broker/Company in the defense of the lawsuit.
- Consequences for non-compliance with policies/agreement.

## **Dress Code**

This section should include:

- The Company's dress code in office.
- Appropriate attire when interacting with clients.

## **Earnest Money**

This section should include:

- That the amount and type of earnest money deposit must be clearly identified in the offer to purchase and shall be made payable to a specific Arizona escrow company or the Broker Trust Account.
- A policy regarding the removal of personal account numbers and personal information from copies of checks before they are forwarded to other Sales Associates.
- That the Sales Associate acknowledges receipt of the earnest money deposit described in the contract, and must receive the deposit at that time.
- That a Sales Associate is not to give a receipt if funds are not given to him/her.
- Whether a Sales Associate can take cash as a deposit and if so, what procedures are to be followed to safeguard it.
- How, when, and where earnest money is to be deposited.

- That the receipt for earnest money deposited with a title company must be turned in to the Broker or the authorized Branch Manager immediately.
- That once the contract has been signed a Sales Associate is not to hold the check in his/her possession under any circumstances, unless specified otherwise in the executed contract (i.e., Business Opportunities).
- Whether a Sales Associate must receive specific authorization from the Broker before accepting a post-dated check from any party in a real estate transaction. Instructions that regardless of whether the contract requires the deposit to be placed in a trust account or turned over to an escrow company, it is to be promptly given to the Broker, and the Broker must produce a paper trail to show how it was handled, i.e., documentation showing what was done with the deposit and when.
- All Earnest Money must be handled in accordance with the terms of the contract and according to ARS §§ 32-2151 and 32-2151.01.
- Company policy regarding improper handling of earnest money and consequences, such as, failing to deposit earnest money by the specified time or falsely representing that earnest money has been deposited.

### **Electronic/Digital Signatures**

The ADRE provides guidance regarding using Electronic signatures in Substantive Policy Statement 2005.10.

This section should include:

- Whether or not the Company will allow electronic signatures.
- What electronic/digital signature companies are recommended/authorized?

### **Hiring**

This section should include:

- That a Sales Associate is not effectively hired by a broker until the broker approves of the license transfer to Company via the ADRE website or until the ADRE receives a completed and signed change form reflecting the hire, and the applicable fee.

### **Illness or Injury**

This section should cover:

- Who to report an illness or injury to.
- Who will handle the Sales Associate's business while they are unavailable.

## Leases

This section should include:

- Procedures and requirements for leasing a property.
- A list of documents to turn in to the Broker, which may include a fully executed lease; a copy of the listing or plano; lease deposit or copy of the lease deposit check; Real Estate Agency Disclosure and Election Form; receipt for Landlord/Tenant Act; and/or commission instructions from Landlord.
- Whether the original is required or if a faxed copy is acceptable.
- Procedures for handling/collection of lease deposits, including cashier's check vs. non-cashiered checks, out-of-state checks, and procedures regarding any delays required for a check to clear the bank.

## Multiple Listing Service (MLS)

This section should cover:

- Who is responsible for dues associated with MLS and when they are to be paid?

## Open Houses

This section should cover requirements regarding open houses, such as:

- Whether Company open house signs must be used.
- Whether and under what circumstances Sales Associates other than the listing agent can hold open houses.
- Any other policies regarding the operation of open houses, including safety policies.

## Partnership Agreements between Sales Associates

- This section may include the following topics: That Sales Associates who elect to be partners shall draft an agreement between themselves.
- That Sales Associates must have the terms of dissolution clearly spelled out in the agreement.
- The Company policy regarding the broker's acknowledgement and approval of a Partnership Agreement between Sales Associates.

See Commissions: Payment of Commissions for further information.

## Personal Safety

This section may include the following topics:

- Personal Safety
- Building Security/ Office Closing Procedures
- Work Injuries/Hazardous Conditions

### **Pre-Possession and Post-Possession**

This section should include:

- That all pre-possession and post-possession agreements between Sellers and Buyers shall be in writing.
- That Sales Associates must recommend to their clients to seek appropriate counsel (including tax, legal, insurance, etc.) concerning risks associated with pre-possession or post-possession.
- What forms and/or form versions a Sales Associate shall use.

### **Property Management**

If the Company allows property management, this section should cover:

- Transaction records for property management transactions must be kept for 3 years.
- Residential leases must be maintained for one year from the expiration of the agreement or until the agreement and related documents are given to the property owner at the termination of the property management agreement. The Company must maintain non-residential lease agreements in accordance with A.R.S. § 32-2175(F).
- The records that must be kept include property management agreements; copies of earnest money receipts; closing statements (showing receipts, disbursements, adjustments); lease or rental contracts; and listing agreements (if applicable).

Pursuant to A.R.S. § 32-2173, a property management firm shall write property management agreements in clear, unambiguous language, and the property management agreements shall:

- State all material terms and conditions of the property management firm's services, obligations, duties and responsibilities to the property owner.
- Be signed by the property owner or his agent and the property management firm's designated broker or the broker's authorized real estate licensee.
- Specify a beginning and an ending date.
- Contain cancellation provisions that are agreeable to both parties.
- Provide for the manner of disposition of all monies collected by the property management firm, including any tenant deposits.

- Specify the type and frequency of status reports to the owner.
- State the amount and purpose of monies the property management firm holds as an operating reserve for emergency and other purposes.
- Provide for the disposition and allocation of interest earned on trust account monies.
- State the terms and conditions of compensation the property owner pays for services pursuant to the property management agreement.
- Not be assigned to another licensee or licensed entity without the express written consent of the property owner.

Property management agreements **may:**

- Contain an automatic renewal provision, if the property management firm sends the owner a reminder notice at least thirty days before the renewal date. The notice does not negate any other cancellation term otherwise agreed to.
- Provide for reasonable liquidated damages or cancellation fees for early termination of the agreement.
- Allow the property management firm's broker to authorize a licensed or unlicensed person in the direct employment of the broker, pursuant to section 32-2174, subsection C, to transfer monies from or to be a signatory on a property management trust account to which the property management firm deposits the owner's monies.
- Require more than one signature on checks written from a property management account.
- Contain any other provisions that are agreed to between the property management firm and the owner and that are not in conflict with the requirements of this chapter.

Immediately on termination of a property management agreement, the property management firm shall provide the owner with:

- All originals or other copies of all rental agreements or related documents in the property management firm's possession for current and previous tenants. These documents shall include any applications, property inventories, leases, pet permits, default notices, lease amendments or addenda in the property management firm's possession. The broker is not required to keep copies of residential rental lease agreements or related rental lease documents after termination of the property management agreement.
- All building plans, environmental studies, conditions, covenants and restrictions, inspection reports, contracts, keys, warranties, personal property or other documents in the possession of the property management firm.

On termination of the property management agreement the property management firm shall provide the owner with a final accounting of the property's financial status that includes at a minimum:

- Within five days, a list of all tenant security obligations.
- Within thirty-five days, reimbursement for all monies remaining in the property accounts maintained by the property management firm, except for monies needed for unpaid obligations incurred during the term of the property management agreement.
- Within seventy-five days, a final accounts receivable and payable list.
- Within seventy-five days, a final bank account reconciliation.

Pursuant to A.R.S. §32-2174 all property management accounts shall be designated as trust accounts and shall include descriptive wording, substantially similar to one of the following, in the trust account title:

- "Trust account".
- "Fiduciary account".
- "In trust for (individual or entity name)".
- "Trustee for (individual or entity name)".
- "Fiduciary for (individual or entity name)".

A broker's trust account is required for all of the owner's monies, except if the owner directs the broker to deposit the monies directly into the owner's account. The broker shall not have access to the owner's account. Trust accounts may be interest bearing.

The designated broker for a property management firm may authorize either a licensee or an unlicensed natural person in the direct employ of the broker to transfer monies or to be a signatory on the property management firm's trust accounts. If the person who is designated to sign on behalf of the designated property management broker is an unlicensed person, that person shall be a bona fide officer, member, principal or employee of the property management firm. The broker may require dual signatures on checks and may use a facsimile signature according to the broker's business policies and procedures. The designation of a licensed or unlicensed person to transfer monies or to be a signatory on trust accounts does not lessen the broker's responsibility or liability for any monies handled.

Within three banking days after receiving monies that are not subject to dispute or contingency, the property management firm shall deposit the monies in either the owner's direct account or the property management firm's trust account for the benefit of the owner. A property management firm may remit an owner's monies under its control to or for the owner by any lawful means available.

Each rental agreement executed by a property manager shall include a provision that clearly states the disposition of any tenant deposits.

Pursuant to A.R.S. §32-2175:

- Property management firms shall keep a residential rental agreement and related residential rental agreement documents for one year from the expiration of the rental agreement or until the rental agreement and related documents are given to the owner at the termination of any property management agreement. The records shall be kept at the broker's main office or at an off-site storage location in this state if the broker provides prior written notification of the street address of the off-site storage location to the department.
- Property management firms shall keep records of all finder fees that are paid to tenants for three years after the payment is made or until the records are given to the owner at the termination of the property management agreement. Records shall be kept at the broker's main office or at an off-site storage location in this state if the broker provides prior written notification of the street address of the off-site storage location to the department.
- Property management firms shall keep all financial records pertaining to clients for at least three years from the date each document was executed, including bank statements, canceled checks or bank generated check images, deposit slips, bank receipts, receipts and disbursement journals, owner statements, client ledgers and applicable bills, invoices and statements.
- Only the designated broker or the broker's authorized real estate licensee, on behalf of the broker, may sign nonresidential rental agreements. The broker shall execute in writing and shall file any delegation of authority in the broker's employee file. Fully executed residential lease agreements are not required to be reviewed and initialed.
- The property management firms shall consecutively number or file all signed property management agreements in compliance with a system that is orderly, easily accessible by the commissioner or the commissioner's representative and consistent with generally accepted professional standards of the industry for that type of real estate.
- Property management firms shall maintain each nonresidential real estate lease agreement and the transaction folder in which it is kept in a chronological log or other systematic manner that is easily accessible by the commissioner or the commissioner's representatives. For nonresidential lease transactions, transaction folders shall contain:
  - Confirmation that the deposits or other monies that were handled by or through the broker were handled according to instructions given by or agreed on by the parties to the transaction.
  - A complete copy of the nonresidential lease or rental agreement.
  - If applicable, a copy of the listing agreement.
- Property management firms shall number on-site residential rental transaction folders according to dwelling unit number or other systematic manner that is easily accessible by the commissioner or the commissioner's representative. A broker is not required to maintain duplicate residential rental transaction folders.

- On request by the commissioner or the commissioner's representatives for routine audit purposes the broker shall make available within a reasonable amount of time all records relative to property management accounts, including lease agreements, lease related documents and trust account records.

### **Request for Information or Documents by Subpoena or Government Officials.**

This section should cover:

- How requests for documents should be handled.

### **Sales Associate Expenses**

This section should clearly establish whether the Sales Associate or the Broker/Company is responsible for various expenses, such as:

- E & O Insurance
- Automobile Insurance
- Office Space and equipment (computers and software; phone, including long distance, 800# service; pagers; postage (including Fed Ex and UPS); facsimile; copier; etc)
- Clerical/Secretarial support
- Advertising
- Liability Insurance
- FICA
- Taxes
- Health Insurance (availability of health or life insurance, or possible sources, such as the NATIONAL ASSOCIATION OF REALTORS<sup>®</sup>, the Arizona Association of REALTORS<sup>®</sup>, or the local Association of REALTORS<sup>®</sup>).

### **Short Sales**

This section should cover:

- Whether and under what circumstances, a Sales Associate should provide the ADRE/AAR "Short Sale Seller Advisory" to a seller selling by short sale:  
[www.aaronline.com/documents/ssseller\\_advisory.pdf](http://www.aaronline.com/documents/ssseller_advisory.pdf)
- Whether Sales Associate is required to recommend to seller to seek legal and tax advice prior to placing property on the market.
- Statement that the Sales Associate may not receive additional compensation from any source (seller, buyer, lender or otherwise) for negotiating a short sale, unless the real estate licensee is also licensed as a loan originator by the Arizona

Department of Financial Institutions (“DFI”) and the requirements of A.R.S. § 32-2155(C) are met .

Statement regarding how the Sales Associate, negotiating a short sale with a lender on behalf of the seller, must comply with the Federal Trade Commission (“FTC”) Mortgage Assistance Relief Services (“MARS”) Rule.

## **Signs**

This section should cover:

- Any restrictions or policies about signs, such as:
  - Not placing them on properties without the signed authorization of the owner (A.R.S. § 32-2153(A)(12))
  - Ensuring that the sign is in conformance with A.A.C. § R4-28-502(A) thru (J). Whether a Sales Associate is required to use sign companies or whether the Company handles sign placement
  - When signs are to be placed and removed.

## **Smoking**

This section should cover:

- The Company’s smoking policy.

## **Submission of Documents**

This section should cover:

- – That the time period required for the Broker to review, initial, and date their review of purchase contracts and similar documents is five (5) days from the execution of the contract (A.R.S. § 32-2151.01(G)). Effective July 20, 2011, the broker review time will change to ten (10) business days from the execution of the contract.
- The policy of the Company regarding the timeframe for submission of all documents to the Broker.

## **Termination Policy**

This section should include:

- Procedures for when a Sales Associate terminates association with the Company, or the Company terminates the Sales Associate, such as:
  - Reviewing all of the Sales Associate’s pending business and determining who will handle the transactions;

- Reviewing any agreements concerning compensation.
- Policies regarding the disposition of Company property upon the severance/termination of a Sales Associate from the Company, such as: keys, key card, documents, etc.
- Company policy/practice concerning listing agreements.
- Information that the severance is not effective under the licensing laws until the ADRE receives the notice of severance

### Use of Transaction Management System

This section should include:

- Information regarding any transaction management platform/system (if applicable), and how Sales Associates and employees will be expected to use the transaction management platform/system.
- See SPS 2010.01 regarding transaction management guidelines:
- [www.azre.gov/LawBook/Documents/SPS Documents/SPS 2010.01 Guidance for Using Elec RE TM Doc Storage Programs.pdf](http://www.azre.gov/LawBook/Documents/SPS_Documents/SPS_2010.01_Guidance_for_Using_Elec_RE_TM_Doc_Storage_Programs.pdf)

### Unlicensed Assistants

This section should include:

- SPS 2005-04 – Substantive Policy Statement regarding the use of unlicensed assistants.
- If an unlicensed assistant is paid on any basis that relies on the ultimate sale of a property, then that person **must** be licensed.
- An unlicensed assistant in the employ of a licensed real estate broker *may*:
  - Perform telephone duties, to include calls to:
    - collect demographic information
    - solicit interest in engaging the services of a licensee or brokerage
    - set or confirm appointments (with no other discussion) for:
      - ✓ A licensee to list or show property
      - ✓ A buyer with a loan officer
      - ✓ A property inspector to inspect a home
      - ✓ A repair/maintenance person to perform repairs/maintenance
      - ✓ An appraiser to appraise property
    - mortgage and/or title companies to track the status of a file, check daily interest rates and points, whether buyer has been qualified, confirm closing appointment for licensee, and so forth
  - Assist a licensee at an open house
  - Unlock a home for a licensee so that licensee can show a buyer the property or preview the property (no discussion about the property).
  - Deliver documents (as a mail or delivery service only).

- An unlicensed assistant *shall not* perform the following activities:
  - Hold/host an open house without an agent being present
  - Perform a walk-through inspection
  - Answer questions relating to a transactional document
  - Give instructions to inspectors, appraisers or maintenance/repair people. Because these instructions are part of the licensee's regular duties and there is a direct relationship to the (potential) transaction, a license is required in order to give instructions to inspectors, appraisers or repair/maintenance people.
  
- An unlicensed person may not act as a residential leasing agent by performing any of the following activities, unless the exemption pursuant to A.R.S. § 32-2121(A)(6) applies:
  - Preparing and presenting to any person a residential lease, application or renewal or any amendment of the lease.
  - Collecting or receiving a security deposit, a rental payment or any related payment for delivery to and made payable to a property, a property manager, an owner or the location.
  - Showing a residential rental unit to any prospective tenant.
  - Executing residential leases or rental agreements.
  - Acting on behalf of the owner or the Company to deliver legal notice related to the property or to the tenants.

### **Vacations/Out of Town**

This section should cover:

- The methods Sales Associate are required to use to communicate, such as: pagers, mobile phones, email, etc.
- What Sales Associates are expected to do when they leave town or are on vacation, such as: designate another Company Sales Associate to handle business.
- Who is required to be notified about the designation.
- Under what circumstances will the Company designate a substitute.

### **Voluntary Office Romances**

This section should cover:

- Company's policy on employees/Sale Associates dating another employee, Sales Associate and/or client.

## Offers

### Presenting Offers

This section should include:

- A description of how contracts are to be presented.
- A requirement that they must be presented in a timely manner.
- A timeframe for what constitutes a timely manner.
- Procedures for what to do if the Sales Associate is not available and cannot timely present a contract.

### Multiple Offers

This section should cover:

- How multiple offers shall be handled.
- Whether the Company requires use of particular forms.

### Rejected Offers

This section should include:

- That the offer should be initialed and dated and include the notation REJECTED or VOID across the face of the contract.
- That rejected offers on Company listings and contract offers must be turned in to the office and retained for one year.
- Instructions that if a contract results, the rejected offers on Company listings must be kept in the transaction file for 5 years.

## Privacy Policy/Data Security

This section should include:

- How company will secure clients' personal information within the company.
- Specific instructions on how Sales Associates should relay personal information to others, i.e., proof of funds, leases, earnest money checks, and removal of all account numbers.
- Physical Documents – how documents will be handled and stored to preclude any unauthorized third-party from obtaining access.
- Electronic Files – requiring that personal information kept in electronic format must be stored on a computer and/or electronic server that is password protected.
- Document retention and destruction – how and when documents containing personal information will be destroyed and/or deleted unless required to be retained by law or broker policy.
- The files and documents that the salesperson may take upon departure.

## **Sales Financing Alternatives**

### **Wrap-around, Carry-back or Subordinate Financing**

This section should cover:

- The Broker's policy concerning an offer which proposes to wrap, carry, or subordinate a loan which contains an alienation and acceleration clause.
- What a Sales Associate, whether a seller's or buyer's agent, should do when presented with or asked to draft an offer including one of these financing clauses and whether particular forms must be utilized.
- Whether the Broker requires a special review of the contract to see that proper form and verbiage have been used.
- The consequences for a Sales Associate who proceeds with one of these contracts without first consulting the Broker.

### **Special Programs**

This section should cover:

- What training is required on government programs, i.e., Home Affordable Modification Program (HAMP) and Home Affordable Foreclosure Alternatives (HAFA).
- The Broker's policy on discussing the HAMP and HAFA programs or similar programs with clients.

## **Social Media**

This section should cover:

- How the Company recommends its Sales Associates use social media.
- A list of recommended venues, especially those particularly applicable to real estate.
- A statement about the use of the Company name and logo on media sites.

## **Transaction Paperwork and Management**

### **Listings**

This section should include:

- That a Sales Associate must turn in every Listing to the Broker immediately upon the Seller's signature.

- Any additional documents the Broker requires.

## **Sales**

This section should cover:

- Cemetery Sales, Membership Camping Contracts, and/or Timeshare Sales, if authorized by the Broker.
- That transaction records for closed sales and leases must be kept for 5 years.
- That records for transactions that do not close must be kept for one year. (A.R.S. § 32-2151.01 and A.A.C. R4-28-802).
- What records must be kept (including copies of earnest money receipts; closing statements showing receipts, disbursements, and adjustments; purchase and lease contracts; addenda; listing agreements).
- In transactions where a binding contract results, the broker must also retain prior rejected offers for at least 5 years. (A.R.S. § 32-2151.01 (J))
- Procedures and timing for Sales Associates to turn in documents to the Broker.
- That the Broker or assigned Branch Manager must acknowledge all contracts, including listing contracts, within 3 days of receiving signatures.
- Additional requirements or documents that must be turned in prior to a Sales Associate being paid a commission.
- The Company's Privacy Policy/Data Security Policy should be restated or a reference made to the Privacy Policy/Data Security section of the manual.

## **Leases**

This section should cover:

- How to handle the leasing information (personal financial information) and the protection of that information.
- What documents are required for the broker file?
- What disclosures should be made to the tenant?
- Which forms the Sales Associates should use?
- A clear policy regarding trust accounts.

## **Cancellations**

This section should cover:

- How to handle a cancelled transaction (which may depend on the reason for cancellation).
- What documents does the Company require be signed before cancellation.

## Maintenance of Transaction Files

This section should cover:

- Any lists of documents required in transaction files, including resales, new home sales, land sales, listings, etc. This is a good place for established checklists or references to the most current checklists required by the Company.
- Necessary timing for each document required, such as timing required to submit to the broker for review and approval.
- What documents require broker's initials or signature.
- How rejected offers are to be handled.
- Whether listing agents are expected to verify listing information prior to submitting to MLS.
- What documents are required in the file for canceled transactions.
- How files involving a transaction where a Sales Associate is a principal in the transaction are to be handled.
- Access to files: who has access and where files are to be kept.
- For a checklist of Transaction file documents.

## Transaction Logs

This section should include:

- A description of the manual or automated chronological or other numbering system used to log transaction files.
- That all purchase contracts and lease agreements must be logged in.
- The Broker's directions to employees/licensees on how and when to log all files for all sales, leases and property management contracts, so that the Broker has a complete and comprehensive log. A.R.S. § 32-2151.01(E) and 32-2175(E) and (F).

Pursuant to A.R.S. § 32-2151.01 the Broker's record keeping requirements are:

- To keep records of all real estate, cemetery, time-share or membership camping transactions handled by or through the broker.
- To keep employment records, including copies of employment status, for all current and former employees.
- To keep copies of earnest money receipts, confirming that the earnest money has been handled in accordance with the transaction, closing statements showing all receipts, disbursements and adjustments, sales contracts and, if applicable, copies of employment agreements.
- The records of each transaction and employment records shall be kept by the broker for a period of at least five years from the date of the termination of the transaction or employment.

- The records shall be kept in the employing broker's principal office or licensed branch office in this state or at an off-site storage location in this state if the broker provides prior written notification of the street address of the off-site storage location to the department.
- The records shall be open at all reasonable times for inspection by the commissioner or the commissioner's representatives.
- A broker shall not grant any person authority to withdraw monies from the broker's trust fund account unless that person is a licensee under that broker's license. (Except as allowed by section 32-2174-(C) regarding property management accounts.
- A broker shall specifically state in the real estate purchase contract, lease agreement or receipt for earnest money the type of earnest money received in any real estate transaction, whether it is cash, a check, a promissory note or any other item of value.
- All licensees shall promptly place all cash, checks or other items of value received as payment in connection with a real estate transaction in the care of the designated broker.
- The broker shall maintain each real estate purchase contract or lease agreement and the transaction folder in which it is kept in a chronological log or other systematic manner that is easily accessible by the commissioner or the commissioner's representatives.

Sales transaction folders shall include:

- Confirmation that the earnest monies or other monies handled by or through the broker were handled according to instructions given by or agreed to by the parties to the transaction.
- A complete copy of the sales contract, any escrow account receipt, any closing or settlement statement and, if applicable, a copy of the escrow instructions, listing agreement, employment agreement and release of escrow monies.

The designated broker shall review each listing agreement, purchase or nonresidential lease agreement or similar instrument within five days of the date of execution by placing the broker's initials and the date of review on the instrument on the same page as the signatures of the parties. A designated broker may authorize in writing an associate broker who the designated broker employs to review and initial these instruments on the designated broker's behalf.

The broker shall retain all real estate purchase and nonresidential lease contracts and employment agreements, or copies of these documents, in the employing broker's principal office or licensed branch office or at an off-site storage location in this state if

the broker provides prior written notification of the street address of the off-site storage location to the department.

The broker shall retain an original, a copy or a microfilm copy of any document evidencing a rejected offer to purchase real property as a matter of record for at least one year. In instances that result in binding contracts, the broker shall retain prior rejected offers for at least five years.

A.A.C. R4-28-802(C) provides: the broker shall retain true copies of all receipts and disbursements, or copies of the executed and delivered escrow closing statements that evidence all receipts and disbursements in the transaction.

## Trust Accounts

This section should cover:

- Whether the Company has a trust account.
- If company has trust account, what procedures should Sales Associates follow to submit checks to trust account.
- Note: Because of the sensitivity of the handling of trust funds, it is recommended that the broker understand the information on the ADRE website -  
[www.azre.gov/Aud/TrustAccountBasics.aspx](http://www.azre.gov/Aud/TrustAccountBasics.aspx)  
[www.azre.gov/Aud/Documents/Trust\\_Account\\_Requirements.pdf](http://www.azre.gov/Aud/Documents/Trust_Account_Requirements.pdf)

Pursuant to A.R.S. § 32-2151 (B), the following minimum requirements apply to each broker's trust fund account:

- The broker shall make deposits to trust fund accounts by deposit slips. Receipts or other documentation shall identify each transaction, the date and the amount of each deposit and the names of parties involved in the transaction represented by the deposit and monies shall be used only for the purpose for which the monies were deposited.
- The broker shall retain a complete record of all monies received in connection with a real estate transaction in the main or branch office of the designated broker in this state or at an off-site storage location in this state if the broker provides prior written notification of the street address of the off-site storage location to the department.
- A broker's records shall be kept according to generally accepted accounting principles and shall include a properly descriptive receipts and disbursement journal and client ledger.
- The broker shall keep any computerized records in a manner allowing reconstruction in the event of destruction of electronic data. The broker shall maintain a trust fund account bank reconciliation and client ledger balance on a monthly basis and shall remove any interest earned on a trust fund account at least once every twelve months.

- A broker shall not permit advance payment of monies belonging to others to be deposited in the broker's personal account or to be commingled with personal monies. It is not considered commingling if, when establishing a trust fund account, a broker deposits monies not exceeding five hundred dollars to keep the account open or to avoid charges for an insufficient minimum balance.

## **Weapons Law**

This section should include:

- The broker may want to include a weapons policy. Notably, Arizona law permits private business owners to prohibit weapons from being brought onto their property, whether signs are posted or not. Failure to obey the request can result in a charge of trespassing.



The Arizona State Legislature adjourned *sine die* on April 20, 2011. The following bills were passed and signed into law by the Governor and affect the Department of Real Estate and related industries. Please be advised of all of the following. The general effective date of the bills is July 20, 2011, unless otherwise stated.

*Please be advised that this list is not comprehensive and therefore may not include all bills that directly or indirectly affect ADRE licensees. Please visit the state legislature's website at [www.azleg.gov](http://www.azleg.gov) for more information.*

## **General:**

**SB1292 real estate; education; broker requirements** (*General effective date, however please note that the provision that requires instructors to attend a three hour workshop is applicable beginning Jan. 1, 2012*) – requires that the real estate exam demonstrate that the applicant has an appropriate knowledge of other real estate practices and principles as determined by the Commissioner; allows the Commissioner to withdraw or deny instructor certification for instructors teaching course content that is not current or that has been substantially changed from the course as approved; starting January 1, 2012, requires that instructors take a three hour department-approved seminar or workshop emphasizing instruction methods, techniques and skills in the 24 months prior to application or renewal; allows for the instructor seminar provision to be waived based on individual request review; finally the bill changes the number of days that brokers have to review listing agreements, purchase or nonresidential lease agreements or similar instruments from five to ten business days and defines business day as “a day that is not a Saturday, a Sunday or any other legal holiday in this state.”

*\*Please note that the continuing education provisions originally included in SB1292 relating to post-licensing education for salespersons and broker supervision are not included in the final version of the bill that was passed and signed by the Governor.*

**HB2102 license eligibility; authorized presence** – makes changes to the lawful presence requirements that licensees have to abide by; exempts an applicant if all of the following apply: (a) they are a resident of another state, (b) they hold the equivalent license in that state that they are seeking in this state, and (c) they seek the Arizona license to comply with this state's licensing laws and not to establish residence in this state; clarifies that if the document the applicant uses to prove lawful presence does not have a photograph, they must also present a government issued document that contains a photograph.

**SB1105 real estate transfer affidavit; transmission** – requires the county recorder, rather than the Department of Revenue, to scan and transmit an electronic copy of affidavits that are received in regard to real estate transfer to the Department of Revenue and the Arizona State Library, Archives and Public Records.

**HB2153 municipalities; counties; fire sprinklers; code** – prohibits a city, town or county from adopting an ordinance that mandates the installation of fire sprinklers in single family homes.

## **Homeowners' Associations:**

**HB2245 homeowners associations; open meetings; recordings** – allows persons attending HOA meetings to tape record or videotape portions of the meeting. The Board of Directors of an HOA is allowed to adopt reasonable rules governing the taping of open meetings, but may not preclude the tape recording or videotaping.

**HB2609 homeowners associations; signs; political; leasing** – makes various changes to laws governing HOAs; prohibits HOAs from charging fees for the use or placement of an indoor or outdoor display of for rent or lease signs by a property owner on their own property; allows HOAs to prohibit signs that are not commercially produced; permits the HOA to prohibit the number of political signs earlier than 71 days, rather than 45 days before an election through 3 days after, rather than 7 days after an election and states that an HOA cannot prohibit the number of political signs that are displayed, except that maximum aggregate total dimensions of all political signs may not exceed nine square feet.

**HB2717 homeowners' associations; penalties; attorney fees** – prevents an HOA from charging a fee for the use or placement of indoor or outdoor display of a for sale or lease sign by a unit owner on their property; clarifies that an HOA shall not prohibit in any other way than as specifically authorized in statute the use of temporary open house signs, a unit owner's or their agent's for sale sign and open house hours for property that is available for sale or lease; states that an HOA or managing agent that violates certain statutes governing the use of indoor, outdoor or political signs by a property owner on their property forfeits and extinguishes the lien rights authorized by statute against that unit or property for a period of six consecutive months from the date of the violation.

**SB1148 homeowners associations; disputes; administrative hearings** – asserts that the Department of Fire, Building and Life Safety applies and enforces the statutes regulating HOAs through its hearing officer function, as well as the interpretation and enforcement of the otherwise private contracts and rules that govern those communities.

**SB1149 planned communities; condominiums; document fees (Effective Dec. 31, 2011)** – limits the fee that a planned community and condominium association can charge a unit owner for the preparation of required documents associated with the resale of a unit to an aggregate of \$400.

**SB1326 flag display; homeowners associations** – prevents an HOA from prohibiting the display of the Gadsden Flag; prevents an HOA from prohibiting the front or backyard display of flags allowed by statute; allowed HOAs to limit the quantity of flags displayed at one time to no more than two; allowed HOAs to limit the height of the flagpole to no more than the member's rooftop.

**SB1540 political flyers; petitions; homeowners associations** – allows HOAs to restrict door to door political activity regarding a candidate or ballot issue from sunset to sunrise; prohibits HOAs from regulating the number of candidates, public officers or propositions supported or opposed on a political

**HB2297 escrow agents; recovery fund; repeal** – repeals the Escrow Recovery Fund administered by the Department of Financial Institutions and reverts all remaining monies to the General Fund.

**SB1180 board of appraisal; disciplinary proceedings** – allows the Board of Appraisal to continue a disciplinary investigation even if the person under investigation surrenders their license or lets it lapse or expire; permits investigations to continue up to 24 months after the license or certificate has expired.