



# **Arizona Department of Real Estate**

## **Model Broker's Policy and Procedures Manual**

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# **ADRE Model Policy and Procedure Manual**

## **Purpose of Model Manual**

The ADRE Model Broker's Policy and Procedure Manual ("Manual") has been developed to provide a model for the broker's written policies and procedures required by A.A.C. R4-28-1103. The use of this Model, as is, would not be sufficient to meet the requirement listed in the aforementioned Arizona Administrative Code. A Broker must adopt a Policy and Procedure Manual reflecting its practices and requirements of its licensees.

This Model Policy and Procedures Manual is intended to assist a Broker in developing their Manual. The Model Policy and Procedures Manual is not intended to instruct a Brokerage how to run their business.

A Broker may choose to adopt any portion of the Manual that is relevant to their brokerage; using any part or this entire Model Manual as a guide to create a manual that brings the Broker into compliance with the rule, which requires a written policy.

## **Notice of Disclaimer**

The requirements set forth in this model are based upon a practical application of Arizona laws, Commissioner's Rules, Substantive Policy Statements and custom, and are not intended to provide legal advice. Laws, Commissioner's Rules, Substantive Policy Statements, forms, custom and requirements referenced in this Model Manual may change. Neither the Real Estate Commissioner, nor any division, officer nor 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 their own risk. The user assumes the risk of verifying any materials used or relied upon herein.

The Company (Employing Broker) and/or Designated Broker is responsible for the acts of all licensees and other employees acting within the scope of their employment (A.A.C. R4-28-1103(D)).

**Begin Your Manual Here**

**(Insert Company Name)**

# **Model Broker's Policy and Procedures Manual**

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(Replace with Company logo here, or leave blank if none)

# ADRE Model Broker's Policy and Procedure Manual

## Table of Contents

### Contents

Purpose of Model Manual	1
Notice of Disclaimer	1
Begin Your Manual Here	2
Table of Contents	3
Definitions	6
ADRE Requirements	7
Company Policies	8
Advertising	8
<i>Broker Review before Placement of Advertising</i>	8
Affiliated Business Agreement (ABA) – RESPA	9
Agency Relationships	10
Annual 1099 Report and Tax Compliance	10
Anti-Trust Compliance	11
Broker Approval and Contact	11
Commissions / Compensation	11
Payment of Commissions	11
Commission Disputes	13
Collection of Commissions	13
Compensation Agreement	13
Referral and Finder's Fees	13
Deferred Commissions	14
Shared Commissions between Licensees in Same Company	14
Company Compensation Schedule – Rate Schedules	14
Out of State/Out of Area Co-Brokerage	15
Commercial Leasing	15
Data Security	15
Electronic Files	15
Document retention and destruction	16
Disclosure Policy and Documents	16
Affidavit of Disclosure	16
Buyer Advisory	16
Lead-Based Paint Disclosure (Sale/Lease)	16
Pool Barriers	17
Seller Property Disclosure	17
Solar Disclosure	17
Water	17
Wholesale Disclosure	17

Duties to Clients and Customers	18
<i>Fiduciary Duties to the Client</i>	18
Duty to Deal Fairly – Obligations to Customers in the Transaction	18
Customer Care (Duties to Clients and Non-Clients)	20
Representing Clients	20
Client Contact and Appointments	20
Obligations to the Non-Client-Customer (Duty to Deal Fairly)	20
Electronic Digital Signature	20
Employees (Office Staff)	21
Equipment	21
Equal Opportunity Employer	21
Fair Housing	22
Anti-Harassment Policy	22
Housing and Urban Development (HUD) and Veterans Affairs (VA)	22
Independent Contractor or Employee (Agreement)	23
Insurance	23
Automobile	24
Cyber Insurance	24
Errors & Omissions (E&O) / Complaints	24
Health and Life Insurance	25
General Liability Insurance	25
Licensee Activity	25
Address Changes – Personal Information	25
Alcohol/Illegal Drug Use	25
Areas of Expertise and Unauthorized Real Estate Activities	25
Disputes between Licensees	26
Earnest Money and Other Trust Monies	26
Hiring/ Severing	27
Licensee Expenses	27
License Renewals	27
Leases (See also Property Management)	28
Listings	28
Manufactured/Mobile Home Sales	28
Multiple Listing Service (MLS) / Other Listing Websites	28
Offer / Multiple Offers	28
Open Houses	29
Personal Safety	29
Pre-Possession and Post-Possession	29
Professional Affiliations	29
Property Management	29
Prospecting	32
Telemarketing – Do Not Call List	32

Sales	32
Sales Financing Alternatives	32
Signs	33
Special Programs	33
Subdivision Public Disclosure Report	33
Submission of Documents	34
Teams	34
Termination Policy	34
Transferring of Licensees Escrows and Listings	34
Transaction Files, Maintenance of	35
Transaction Management	36
Trust Accounts	36
Unlicensed Assistants	37
Vacations/Out of Town	37
Weapons	37
Wire Transfer Fraud	37
<i>ACKNOWLEDGMENTS</i>	39

## 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 may appear in this manual which are defined below:

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

**AAR** - Arizona Association of REALTORS®

**ADRE** - Arizona Department of Real Estate

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

**AMA** – Arizona Multi-housing Association

**Associate Broker** – A licensed broker employed by another broker. Unless otherwise specifically provided, an associate broker has the same license privileges as a salesperson.

**AZREEA** – Arizona Real Estate Educators Association

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

**Company** – (Company name here)

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

**Designated Broker** – The natural person who is licensed as a broker under Title 32, Chapter 20, and who is either: designated to act on behalf of an employing real estate, cemetery or membership camping entity, or doing business as a sole proprietor, pursuant to A.R.S. § 32-2101(A)(21).

**Employing Broker** – A person who is licensed or is required to be licensed as a broker entity pursuant to A.R.S. § 32-2125 (A) or a sole proprietorship if the sole proprietor is a broker licensed pursuant to Title 32, Chapter 20.

**Licensee** – A person to whom a license for the current license period has been granted under any provision of Title 32, Chapter 20.

**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®

**NARPM** – National Association of Residential Property Managers®

**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

# ADRE Requirements

## Office Policy Manual

Effective August 6, 2002, Commissioner's Rule R4-28-1103, [click here](#), was adopted that requires an Employing Broker and a Designated Broker to exercise reasonable supervision and control over the activities of brokers, salespersons, and others in the employ of the broker. Reasonable supervision and control includes the establishment and enforcement of 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 and if a real estate broker, this includes real estate employment agreements under A.R.S. § 32-2151.02, [click here](#).
2. Manage the filing, storing, and maintenance of transaction documents that may have a material effect upon the rights or obligations of a party to a transaction, handling of 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 employing broker and by all salespersons, associate brokers, and employees of the broker.
6. A Designated Broker shall establish a system for monitoring compliance with statutes, rules and the Employing Broker's policies, procedures and systems.
7. A Designated Broker is responsible for the acts of all associate brokers, salespersons, and other employees acting within the scope of their employment.
8. If an Employing Broker maintains one office, and employs a Designated Broker, no more than one other licensed person, and no more than one unlicensed person, the Employing Broker and Designated Broker are not required to develop and maintain written policies, procedures, and systems as described herein.
9. Licensees are obligated to remain licensed, abide by all laws and rules and abide by the broker's policies and procedures.
10. 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 under their employ, or to another Designated Broker, to handle the day-to-day operation of the Company. Each designation may not exceed 30 days. See A.R.S. § 32-2127(D), [click here](#).

# Company Policies

## Advertising

This section may cover all advertising media, including the Internet; websites, blogs, and social media, and provide information on the Company policy and process for all advertising to be reviewed by the Designated Broker.

- Review of advertising for Fair Housing compliance and use of the Fair Housing logo.
- Review of advertising for compliance with federal regulations, i.e. Regulation Z and Truth in Lending laws.
- Set standards for social media and advertising.
- A salesperson or broker shall ensure that all advertising identifying a specific property must include in a clear and prominent manner the employing broker's legal name or the dba name contained on the employing broker's license certificate. See, R4-28-502, [click here](#).
- Social Media, Internet Activity, Emails and Texts about Property or Real Estate Services Are Advertising: The ADRE Commissioner's Rules specify that the use of an electronic medium, such as the Internet or web site technology that targets Arizona residents with the offering of a property interest or real estate brokerage services pertaining to property located in Arizona also constitutes advertising. A.A.C. R4-28-502(L) (See also, A.R.S. §32-2163(D)). Thus, online advertising and marketing via text and short message services (SMS) are subject to the same rules as print advertising.
- The licensee acknowledges that the use of an electronic medium, such as the Internet or website 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 as defined by A.R.S. § 32-2101(A)(2) and is subject to the same Arizona policies and procedures as all other media.

## ***Broker Review before Placement of Advertising***

A.A.C. R4-28-502, [click here](#) provides:

- A licensee 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.
- If registered with ADRE, a licensee may use a derivative of their first or middle name or a nickname that they regularly use for advertising purposes only. Registered nicknames are listed on the ADRE Public Database. A licensee must use their legal name when signing all contracts and legal documents.
- A licensee advertising their own property for sale, lease, or exchange shall disclose the licensee's status as a salesperson or broker, and as the property owner, by placing the words "owner/agent" in the advertisement.
- A licensee shall ensure that all advertising contains accurate claims and representations, and fully states factual material relating to the information advertised. A licensee shall not misrepresent the facts or create misleading impressions.

- As noted above for advertising referring to a specific property and pursuant to R4-28-502, a licensee must ensure that all advertising identifies in a clear and prominent manner the employing broker's legal name or the dba name as contained on the Employing Broker's license record.
  - Note that the Commissioner's Rule references "employing broker's license certificate." While license certificates are no longer issued by the Department, a licensee may locate and print their certificate from ADRE's Licensee Login Portal, [here](#). Arizona real estate licensees can locate their license record on the Online Public Database, [here](#).
  - Note that the Arizona Department of Real Estate and Arizona Association of REALTORS® published a Real Estate Advertising Rules & Guidance article that may be a useful reference for Companies when developing policies and procedures, [here](#).
- A licensee 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.
- Before placing or erecting a sign giving notice that a specific property is being offered for sale, lease, rent, or exchange, a licensee shall secure the written consent of the property owner, and the sign shall be promptly removed upon request of the property owner.

### **Affiliated Business Agreement (ABA) – RESPA**

Topics to consider, include:

- Identification of relationships the Company has established with other companies that require disclosure under the Real Estate Settlement Procedures Act (RESPA) and the form that is required for disclosure.
- The Company policy concerning licensee referrals made to clients or customers, requirement of broker's signature on all forms, including any required disclosure of compensation.
- When the disclosure of a relationship is required.
- Whether individual licensees can enter into ABAs or whether this right is reserved solely to the Company.

Consumer Financial Protection Bureau (CFPB) RESPA Information, [click here](#)

SPS No. 2008.06 Preventing Mortgage Fraud through Disclosure, recommends that a licensee who provides a premium, credit, or rebate in a real estate transaction disclose the premium, credit, or rebate to all parties in the transaction, including the lender and third-party service providers, such as appraisers, in the purchase agreement and the closing statement, [click here](#).

## Agency Relationships

This section could clearly describe the Company's policy on agency and disclosure and/or the consent forms to be used. The following are examples of different forms of agency a company may implement:

- The Company represents the seller/landlord exclusively when the Company is the listing agent, but not the selling/leasing agent.
- The Company represents the buyer/tenant exclusively when the Company is 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 licensee or two licensees from the same Company.
- Agency is established with the broker, not the Sales Associates.
- The Company will cooperate with a selling/leasing agent from another 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] acted for more than one party in a transaction without the knowledge or consent of all parties to the transaction."

In transactions involving a commercial lease, representation must be identified and documented as early in the negotiations as possible.

## Annual 1099 Report and Tax Compliance

Topics to consider, include:

What IRS and Arizona Department of Revenue (ADOR) forms should be used, and who is responsible for tax liabilities and/or deductions identified by the Employing Broker.

- Who will issue the Independent Contractor 1099 Forms each year?
- Contact information for IRS and ADOR.
- Include information from ADOR about registering for Transaction Privilege Tax, if applicable.
- Whether IRS 1099 Forms will be issued to referral brokers, and other recurring payments and who is responsible for issuing the forms.

For additional information on ensuring proper classification of employees as 1099 Independent Contractors or W-2 Employees, visit the Internal Revenue Service, a Bureau of the United States Treasury at [irs.gov](https://www.irs.gov) or [here](#).

For additional information on ensuring proper wages and compensation for employees and other labor-related requirements, visit the United States Department of Labor at [dol.gov](https://www.dol.gov) or [here](#).

## **Anti-Trust Compliance**

Topics to consider, include:

- Compliance with the anti-trust laws, describing the conduct of Licensees/Employees and results that are to be avoided. Licensees/Employees must avoid discussion with others, including competing firms regarding commission policies 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.
- Caution regarding the distribution of listings exclusively to select and/or closed groups of individuals.
- Federal Trade Commission, [click here](#)

## **Broker Approval and Contact**

Topics to consider, include:

Do you require broker approval prior to a client signing a document for [pre-possession](#)?

Do you require broker approval prior to a client signing a document for [post-possession](#) agreements?

Do you require broker approval prior to a client signing a document when the use of language in the Additional Terms section of a Purchase Agreement is used?

Do you require broker approval prior to a client signing a document for a Wrap Loan?

Do you require broker approval prior to a client signing a document for a Carryback?

Don't forget:

- Support Phone Number
- Support Email Address
- After hours support procedure

## **Commissions / Compensation**

Compensation means any fee, commission, salary, money, or other valuable consideration for services rendered, as well as, the promise of consideration whether contingent or not.

A.R.S. § 32-2101(16), [click here](#).

## **Payment of Commissions**

Topics to consider, include:

- Licensed Transaction Coordinators may be paid through what is traditionally considered a 1099 relationship with their licensed employing broker.
- Only licensees can be paid a commission through their employing broker or employer other than the legally licensed broker as described in A.R.S. § 32-2155(A)(2), [click here](#), or refer to SPS No. 2022.02. Requirements for Teams, [click here](#).
- Refer to SPS No. 2005.08. Payment of Commission After License Expiration or Transfer of Employment, regarding payment of commission after license expiration or transfer of employment, [click here](#).

- When a real estate licensee 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. Commissions are paid to the licensee in accordance with the licensee's commission agreement with the Company.
- When the Designated Broker of the Company will authorize the escrow company to pay commissions on each specific transaction, directly to the licensees on the broker's behalf. Only the Designated Broker shall give written authorization to escrow on all splitting, and/or payments of commissions.
  - Upon direction in writing on each individual transaction, commission checks should be delivered by escrow directly to the Employing Broker along with the closing statement, for Designated Broker verification and documentation.
- What fees will be deducted from the commission, i.e., Errors and Omissions Insurance (E&O).
- What date determines which month the transaction closes, and when commission is earned?
- If commission checks received need to clear the bank before payment to the licensee is made.
- Time from delivery of checks from escrow to delivery of check to licensees.
- Whether Employing Broker allows "Commission Advances". If so, under what terms and processes, including requirement for Designated Broker signature.

Pursuant to A.R.S. §32-2155, [click here](#)

A broker shall employ and pay only active licensees.

A licensee shall accept employment and compensation as a licensee only from the legally licensed broker to whom the licensee is licensed or employer other than the legally licensed broker as described in A.R.S. § 32-2155(A)(2), [click here](#).

If the licensee is licensed through a professional corporation (PC) or a professional limited liability company (PLLC), the employing broker may pay the licensee, and the licensee may receive compensation only through the licensed professional corporation (PC) of which the licensee is an officer and shareholder, or the licensed professional limited liability (PLLC) company of which the licensee is a member or manager.

Note: The PC or PLLC must not pay any licensee other than the licensees named as members of the PC or PLLC. A real estate PC or PLLC is a corporation registered with the Arizona Corporation Commission, and licensed with ADRE.

Licensees may wish to seek the assistance of legal counsel and/or a tax professional prior to registering a PC or PLLC with the Arizona Corporation Commission (ACC) and the ADRE. The Designated Broker (DB) must sign the ADRE PC/PLLC form and must not pay compensation to a PC or PLLC until the approved LI-231 - Professional Corporation (PC) or a Professional Limited Liability Corporation (PLLC) Application, [click here](#), is in the DB's possession.

## **Commission Disputes**

Topics to consider, include:

- How commission disputes between licensees under the Employing Broker are to be handled;
  - o Whether there must be a written agreement, and what happens when there isn't;
  - o Will there be an internal arbitration process; and
  - o Whether the broker will mediate or arbitrate the matter.
- Who pays expenses if unauthorized actions are taken outside of the policy, and what are the consequences.

Pursuant to A.R.S. § 32-2152(B), [click here](#), the Real Estate Commissioner is precluded from entertaining complaints regarding the earning, splitting, or non-payment of compensation.

## **Collection of Commissions**

Topics to consider, include:

- Costs of recovering any commissions, and who pays for the costs (ie. Company, licensee, or another party).
- Division of any forfeited earnest money deposit.
- Reduction of commission negotiated by the licensee, permissions required, etc.

## **Compensation Agreement**

Topics to consider, include:

- Licensee compensation - any deduction from commission shall be itemized.
- Compensation paid after termination.
- How bonuses are to be paid and divided.
- If appropriate, how an employing broker will compensate out of MLS area licensees and brokers when accepted offers are presented by an out of MLS area licensee.
- Commission/compensation agreements must be in writing with specificity of the form to be used.

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

Topics to consider, include:

- Outgoing referral fees must be paid only to a licensed Employing Broker/Company.
- For out-of-state referrals, a copy of referring Employing Broker's license is recommended.
- No fees shall be paid to unlicensed persons or entities.
- How incoming referral fees are handled.
  - o Referral fees are payable only to the Company.
  - o If and how referral fees will be split with the Company.

- o Whether a form is required to be used with either incoming or outgoing referrals and whether it must be signed by all Designated Brokers involved.
- Whether the Company pays finder fees in the form of a credit or reduction in monthly rent to unlicensed tenants of apartment complexes (A.R.S. § 32-2176, [click here](#))
  - o If so, the amount allowed, and forms to use.
  - o If any signature of authorization is required.

### **Deferred Commissions**

Topics to consider, include:

- If Employing Broker or employer other than the legally licensed broker as described in A.R.S. § 32-2155(A)(2), [click here](#), allows deferred commissions.
- 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.

### **Shared Commissions between Licensees in Same Company**

Topics to consider, include:

- Only the Designated Broker or employer other than the legally licensed broker as described in A.R.S. § 32-2155(A)(2), [click here](#), shall pay licensees in the Company.
- How shared commissions will be handled.
- Types of agreements that are drawn.
- Whether broker approval is required.
- What happens if a commission is shared without broker approval or approval from an employer other than the legally licensed broker as described in A.R.S. § 32-2155(A)(2), [click here](#)?
  - o Are verbal agreements allowed or is in writing preferred/required, etc?
- Shared commissions and referral fees paid to someone outside the Company are to be paid by the Company to the outside Company, not by any licensee to a licensee.

### **Company Compensation Schedule – Rate Schedules**

Determined by each broker independently, topics to consider, include:

- Compensation splits;
- Errors and omissions insurance deductions, if any, and whether they are related to the licensee's compensation level;
- Compensation paid after termination;
- Division of bonus payments;
- Any minimum acceptable cooperating commission without prior approval of the Designated Broker when representing buyers;

- Any minimum acceptable listing commission without prior approval of the Designated Broker;
- How any bonuses are to be paid;
- Whether amounts owed to the Company by the licensee will be deducted from the commission by the Company.

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

Topics to consider, include:

- How brokers will cooperate and compensate out of MLS area brokers when offers are presented.
  - o All payments shall go to the cooperating Employing Broker.
- How will commissions be handled?
- Commission agreements must be in writing.

Compliance with A.R.S. § 32-2163, [click here](#), is required when conducting business with an out of state Company. All negotiations in Arizona and with people owning property in Arizona must be conducted through the Arizona broker.

### **Commercial Leasing**

Brokers must make sure all parties of the transaction know who represents them and document as early in the negotiation as possible.

Pursuant to A.R.S. § 32-2153(A)(2), [click here](#), all licensees must identify and document representation of all parties as early in the negotiations as possible.

### **Data Security**

Topics to consider, include:

- o How Company will protect and secure the personal information of licensees and clients within the Company.
- o Specific instruction on how licensees should communicate personal information to others, i.e., proof of funds, leases, earnest money checks, etc.
- o Physical Documents – How licensees should handle the storing and confidentiality of documents.
- o How documents will be handled and stored to preclude any unauthorized third-party from obtaining access, including dual agency transactions.

### **Electronic Files**

- o Requirements that personal information kept in electronic format must be stored in a computer and/or electronic server that is password protected, and backed up.
- o See, SPS [No. 2010.01. Guidance for using Electronic Real Estate Transaction Management and/or Document Storage Programs.](#)
- o See, SPS [No. 2005.06. Electronic Record Keeping.](#)

## Document retention and destruction

- o How and when documents containing personal information will be destroyed and/or deleted, unless required to be retained by law or broker policy.

## Disclosure Policy and Documents

Topics to consider, include:

### Affidavit of Disclosure

- For transactions involving five (5) or fewer parcels other than subdivided land, located in an unincorporated area, should include the use of the Affidavit of Disclosure, pursuant to A.R.S. §§ 32-2101, [click here](#), and 33-422, [click here](#).

### Buyer Advisory

- Whether, or under what circumstances, licensee should use a Buyer Advisory
  - o If so, form to be used and process, timing, etc., i.e., [click here](#)

### Lead-Based Paint Disclosure (Sale/Lease)

- The U.S. Department of Housing and Urban Development (HUD) requires that every seller or lessor 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.
  - o This means for nearly every property in question, all buyers or tenants must receive the lead-based paint disclosure information.
  - o Examples of Disclosure Forms from the United States Environmental Protection Agency:
    - [Seller's Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards](#)
    - [Lessor's Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards](#)
- That every buyer/tenant is to receive a copy of the pamphlet "[Protect Your Family from Lead in Your Home](#)".
- HUD – About Lead-Based Paint, [click here](#)
  - o Are Seller(s)/Landlord initials or signatures required for disclosure notice?
  - o Are Buyer(s)/Tenant initials or signatures required to acknowledge receipt of notice?
  - o Are Listing/Cooperating Agent(s) required to initial and sign the receipt?

## **Pool Barriers**

- Whether a local pool barrier disclosure is required, if so, the required form.
- Ensuring that the seller complies with provisions of A.R.S. § 36-1681(E), [click here](#), by providing the buyer, lessee, or renter with a notice, approved by the Arizona Department of Health Services (AZDHS), explaining safety education and responsibilities of pool ownership:

AZDHS – Residential Pool Safety Notice, [click here](#)

## **Seller Property Disclosure**

- Which form would be used for the Seller Property Disclosure?
- Whether the Company requires all sellers to complete a Seller Property Disclosure on every listing. If so, which forms are acceptable and are there any exceptions i.e., perhaps for new construction not complete at time of listing, estate sales, bank-owned property, family trust, etc., and how to indicate in the purchase contract that the seller is not providing a Seller Property Disclosure).
- What is the Company policy regarding a seller's refusal to complete a Seller Property Disclosure or buyer that wishes to waive receipt of the Seller Property Disclosure?
- How the licensee is to handle any questions that are not answered, appear to be inaccurate, inconsistencies and red flags, or if the seller refuses to complete a Seller Property Disclosure.

## **Solar Disclosure**

- If there is a form for Solar Disclosure, when it is to be used and when?

## **Water**

- How the licensee is to address any questions related to water availability. The Arizona Department of Real Estate has information available on its website [advising prospective home buyers to investigate water availability](#) before purchasing real property, including that the [Arizona Department of Water Resources](#) is a prospective purchaser's first step to [investigate water availability](#) and to learn more about groundwater supplies.

## **Wholesale Disclosure**

- Brokerage policy on whether or not licensees are allowed to conduct wholesale transactions.
- Pursuant to A.R.S. § 44-5101, wholesale buyers must disclose in writing to the seller that the buyer is a wholesale buyer. Similarly, a wholesale seller must disclose in writing to the buyer that the seller is a wholesale seller that holds an

equitable interest in the property and may not be able to convey title to the property.

- If there is a form, when it is to be used and when?

## **Duties to Clients and Customers**

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

Duties to the Client Brochure, [click here](#).

Topics to consider, include:

- The broker's and licensee's responsibilities when acting as agent for a client.
- Duties of confidentiality, accountability, reasonable skill and care, loyalty, obedience (lawful), accounting and disclosure.

## **Duty to Deal Fairly – Obligations to Customers in the Transaction**

Topics to consider, include:

Pursuant to A.A.C. R4-28-1101, [click here](#),

- A licensee owes a fiduciary duty to the client and shall protect and promote the client's interests.
- The licensee shall also deal fairly with all other parties to a transaction.
- A licensee 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 licensee shall expeditiously perform all acts required by the holding of a license. A licensee shall not delay performance, either intentionally or through neglect.
- A licensee shall not allow a controversy with another licensee to jeopardize, delay, or interfere with the initiation, processing, or financing of a transaction on behalf of a client. This prohibition does not obligate a licensee 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 licensee 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 brokers 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 licensee shall not accept compensation from or represent more than one party to a transaction without the prior written consent of all parties.
  - A licensee 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 licensee provides 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 licensee shall not undertake to provide professional services concerning a type of property or service that is outside of the licensee's field of competence without engaging the assistance of a person who is competent to provide those services, unless the licensee's lack of expertise is first disclosed to the client in writing and the client subsequently employs the licensee.
  - A licensee shall exercise reasonable care in ensuring that the licensee obtains information material to a client's interests and relevant to the contemplated transaction and accurately communicates the information to the client. A licensee is not required to have expertise in subject areas other than those required to obtain the salesperson's or broker's license.
  - A licensee shall take reasonable steps to assist a client in confirming the accuracy of information relevant to the transaction.
  - A licensee 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 licensee 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, [click here](#),

- Upon execution of any transaction document a licensee 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 licensee shall promptly submit to the licensee's client all offers, whether verbal or in writing, to purchase or lease the listed property.
- Upon receiving permission from the seller or lessor, the licensee 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 licensee 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 licensee in writing to cease submitting offers or unless otherwise provided in the listing agreement, lease, or purchase contract. The licensee 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.

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

### **Representing Clients**

Topics to consider, include:

- What the licensee's responsibilities are when acting as an agent, to be present during all showings, inspections, document signings, and escrow closings.
- What the licensee's responsibilities are to keep clients informed.
- Whether these responsibilities are required in new home searches and transactions.

### **Client Contact and Appointments**

Topics to consider, include:

- Expectations 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 licensee.
- How the licensee should handle the inability to keep an appointment.

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

Topics to consider, include:

- The broker's/licensee's obligation to disclose in writing to all other parties:
  - o Any information that materially and adversely affects the consideration to be paid by any party to the transaction.
  - o That the seller/lessor is, or may be, unable to perform.
  - o That the buyer/lessee is, or may be, unable to perform.
  - o Any material defect existing in the property being transferred.
  - o The possible existence of a lien or encumbrance on the property being transferred.
  - o That the broker/licensee is the principal or has a financial or beneficial interest in the property.
  - o That the broker/licensee is related to one of the principals.
  - o That the broker/licensee has a conflict of interest.

## **Electronic Digital Signature**

Topics to consider, include:

- What electronic/digital signature companies are used and if any are not permitted?

- What, if any, policy exists regarding a Licensee's ability to sign on behalf of a client? If so, must it be in writing? Has it been properly disclosed?
- SPS No. 2005.10 Electronic Signatures, [click here](#).

## **Employees (Office Staff)**

Topics to consider, include:

- 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
- Harassment Policy
- Discrimination Policy
- Unlicensed Assistant Policy
- All Employer/Employee Disclosures/Disclaimers

A separate manual may exist covering these and all Human Resources policies.

## **Equipment**

Topics to consider, include:

- What security measures must be taken?
- Who is allowed to use company computers?
- What can the computers be used for, i.e., business vs. personal – sharing of passwords?
- Does the company have email service, or are licensees responsible for their own email service?
- Does the company have a policy on which email service providers are permitted for transactions?

## **Equal Opportunity Employer**

Topics to consider, include:

- An affirmative statement concerning equal opportunities at the Company

## **Fair Housing**

Topics to consider, include:

- A statement concerning compliance with State and Federal Fair Housing Acts.
- Clear instructions on compliance with the State and Federal Fair Housing Laws.
- When based on race, color, sex, religion, gender identity, sexual orientation, national origin, familial status or disability, the [actions listed on the Arizona Department of Housing's website](#) by housing providers or professionals are prohibited under the Fair Housing Act and [Presidential Executive Order, published January 20, 2021](#).
  - As such, it is prohibited to make, print or publish 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, gender identity, sexual orientation, handicap, familial status, or national origin.
- Note that real estate licensees affiliated with a trade association may be bound to additional guidelines or considerations.

Some resources for Fair Housing laws and rules:

- HUD - Fair Housing Act, [click here](#).
- Arizona Attorney General - Civil Rights Complaint Form (Housing Discrimination), [click here](#).
- General Information from Arizona Attorney General, [click here](#).
- Additional protections may apply based on local ordinance.

## **Anti-Harassment Policy**

Topics to consider, include:

- A statement that is consistent with the Company's commitment to provide equal employment opportunities. The Company will not tolerate any form of discrimination or harassment. This could include sexual harassment or discrimination or harassment on the basis of age, disability, race, national origin, religion or any other protected class or category.
- How claims should be reported.
- How claims will be investigated or handled.

## **Housing and Urban Development (HUD) and Veterans Affairs (VA)**

Topics to consider, include:

- HUD Procedures
  - Company [SAMS NAID](#) number
  - Company tax ID Number

- o Company address to use on HUD contracts
- o HUD bid website ([www.hudhomestore.com](http://www.hudhomestore.com))
- o How to handle earnest money for HUD offers/contracts
- VA Procedures
  - o VA bid website ([www.vahomes.org/pn/](http://www.vahomes.org/pn/))
  - o How to handle earnest money for VA offers/contracts

## **Independent Contractor or Employee (Agreement)**

Topics to consider, include:

- The licensee’s standing as an Independent Contractor or Employee; including types of activities that may affect the licensee’s standing as perceived by the Internal Revenue Service, Arizona Department of Revenue or the Arizona State Compensation Fund.
- Whether a written Independent Contractor Agreement (ICA) with the Company is required.

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

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;
3. Have a written contract with the brokerage firm that provides that the licensee will not be treated as an employee for federal tax purposes; and
4. If a broker’s agents are independent contractors, licensees cannot be required to perform any duties, obligations or have any responsibilities, per company policy, that are not required by law.

For additional information on ensuring proper classification of employees as 1099 Independent Contractors or W-2 Employees, visit the Internal Revenue Service, a Bureau of the United States Treasury at [irs.gov](http://irs.gov) or [here](#).

For additional information on ensuring proper wages and compensation for employees and other labor-related requirements, visit the United States Department of Labor at [dol.gov](http://dol.gov) or [here](#).

## **Insurance**

Topics to consider, include:

## **Automobile**

- Who is responsible for providing transportation, and who pays expenses
- The Company's minimum insurance requirements and what the limits of coverage are
- Any indemnification/hold harmless clauses the Employing Broker may require
- Company requirements, if any, to be an additional insured on licensee's policy
- Company's requirements, if any, for higher limits or additional coverage if clients are in the vehicle

## **Cyber Insurance**

- Who is covered, (company only/agents employed by company). If coverage is only for company? Will be possible coverage for agents be discussed with them? What services, equipment, etc. are covered?
- Who is responsible for paying the premiums or, if prorated, what the licensees share may be? Who covers the deductions or any increase in the deductible or premium?
- Brokerage policy on notifying broker of cyber threats and actions licensee should take.

## **Errors & Omissions (E&O) / Complaints**

- Who is responsible for paying the premiums or, if pro-rated, what the licensees share may be? Who absorbs the deductions or any increase in the deductible or premium?
- Licensee should be cautioned that there are circumstances where E&O may not provide coverage, i.e., intentional misrepresentation, fraud, commercial environmental issues, transactions where licensee acts as a principal.
- Does the Company's E&O coverage include licensee owned properties?
- What are the requirements for coverage, what type of property does this include (residential, land, commercial, property management, business opportunities). Is there a difference in the fee and who is responsible for payment?
- Does Company's E&O coverage include unlicensed assistants hired by other than Employing Broker?
- What are the legal and complaint procedures with regard to the following:
- Additional Considerations:
  - Client/customer complaint letters
  - Attorney letters
  - Production of letters for subpoenas
  - Lawsuit subpoena
  - ADRE complaints
  - IRS revenue tax levy
  - Judgments/garnishments

The following could be included:

- Claims or litigation
- E&O insurance license agreement
- Indemnification from licensee

- o Severance from Company

### **Health and Life Insurance**

- Who will be financially responsible for the licensee's health and life insurance

### **General Liability Insurance**

- The brokerage position concerning General Liability Insurance for licensees
- Should licensees carry individual coverage, and if so, how much
- If the Company permits property management, does the Company require liability insurance from owner – should the Company be listed as additional insured.

### **Licensee Activity**

This section could include licensee issues relating to office affiliation:

#### **Address Changes – Personal Information**

- Brokers and licensees must notify ADRE within 10-days of a change of residence/ mailing address, personal information, including email address and within 10 days of a criminal conviction or judgment.
- Broker requirements for being notified of the above.
- The Broker must notify ADRE of any change or abandonment of a business location within ten days, pursuant to R4-28-302(G), R4-28-303(E)

#### **Alcohol/Illegal Drug Use**

- Company policy regarding alcohol in the workplace or Company sponsored activities
- Prohibition against illegal drug use
- Company policy regarding use of recreational and medical marijuana

#### **Areas of Expertise and Unauthorized Real Estate Activities**

- What is the Company position on a real estate agent's legal duty to the client when the transaction or listing ends?
  - o This section may include:
    - How to handle the risk when new issues arise or the client seeks advice after closing
    - What the agent's duty is as a matter of law (or Broker policy)
- What is the Company position on working outside of area of expertise?
- What does Company require as far as education for areas of expertise, or designation, if any, i.e., CCIM for commercial
- Does Company allow its licensees to be principals in separate LLC's for working as a vendor on properties. If so, what are disclosure requirements to the Company and to consumers.

- Company policy regarding areas of practice that licensees are not authorized to participate in without prior approval of the broker, for example;
  - o Sales, leases, exchanges and property management, commercial, industrial, multi-family, agricultural or vacant properties
  - o Short sale
  - o REO or bank owned
  - o Business opportunities
  - o FHA or VA owned properties
  - o Attorney-in-fact/acting on buyer's or seller's behalf
  - o Unsubdivided lands
  - o License selling/leasing/buying own real estate – fix and flip
  - o Contracts allowing for assignment during escrow period
  - o Wholesaling

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

### **Disputes between Licensees**

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

### **Earnest Money and Other Trust Monies**

- The amount and type of earnest money deposit must be clearly identified in the offer to purchase and shall be made payable, or wired to a specific escrow/title company or the Employing Broker trust account.
  - o No postdated checks can be accepted.
- Removal of all personal account numbers and personal information from a check before forwarding a copy to a listing agent.
- The receipt for earnest money from the escrow/title company, must be turned into the broker or the authorized branch manager immediately upon receipt.
- All earnest money must be handled in accordance with the terms of the contract and according to ADRE statutes.
- Company policy on retainer agreements and monies paid by client and monies held by Employing Broker.
- When will monies held, if not refundable, be released to sales associate.

- All refundable monies must be deposited to Employing Broker’s Trust Account (not operating account).
- Notice that improper handling of earnest money may be grounds for immediate dismissal of a licensee. Improper handling of earnest money could include;
  - o Failing to deposit earnest money by the specified time
  - o Converting of funds
  - o Commingling
  - o Falsely representing that earnest money has been deposited

### **Hiring/ Severing**

- A licensee is not effectively hired by a broker until the broker approves of the license transfer to Company via ADRE website.
- A licensee may sever from Company without broker approval.
  - o What is required by the Company at the time of severance?
- Brokers should use their [Licensee Login](#) to manage the renewal dates of licensees under their employ.

### **Licensee Expenses**

- E&O insurance
- Automobile insurance
- Office space & equipment (computers and software, phones, long distance calling, 800# service; postage, i.e., Fed Ex, UPS, USPS, fax, copiers, etc.
- Clerical/assistant support
- Advertising
- Liability insurance
- Taxes, FICA, etc.
- Health insurance (availability of health or life insurance, possible sources)

### **License Renewals**

- Single most common error in renewing timely and exposing the Company and licensee to risk - the licensee completes continuing education requirement but fails to pay the renewal fee, therefore the license renewal does not process completely.
- What continuing education requirements are necessary?
- License renewal period should be addressed.
- Recommendations of education can be suggested, i.e., additional and specific CE or GRI, etc.
- Reminder – only the licensee may complete their CE hours and upload to ADRE for license renewal.
- ADRE’s New Licensee Packet answers many common questions about logging into a licensee’s personal page on the Online License System, [click here](#).

ADRE license renewal information: [Click here](#)

## **Leases (See also Property Management)**

- Broker's definition of property management.
- What are the broker's requirements to allow a licensee to practice property management?
- How to handle the leasing information (personal financial information) and the protection of that information.
- What documents are required for the broker file – where broker files are located
- What disclosures should be made to the tenant?
- What forms should the licensee use.
- Company must have a clear policy regarding trust accounts, and the submission to the broker for the monthly trust account three-way reconciliation.

## **Listings**

- Deadlines for turning in paperwork for Designated Broker approval.
- Any additional documents the Designated Broker requires.

## **Manufactured/Mobile Home Sales**

Guidelines for the sale of mobile homes and manufactured homes are different than a standard residential sale. Refer to [Arizona Revised Statute, Title 41, Chapter 37, Article 4](#). The Broker needs to determine if they will permit their agents to sell mobile/manufactured homes. Broker to set their own office policy.

For more information, visit the Arizona Department of House, [click here](#).

## **Multiple Listing Service (MLS) / Other Listing Websites**

- Who is responsible for dues associated with listing websites and when are they paid?
- What listing websites are used?

## **Offer / Multiple Offers**

Topics to consider, include:

- A description of how contracts are to be presented, and that they must be presented in a timely manner.
- What will happen when licensee is not available and cannot timely present/respond to a contract?
- How multiple offers should be handled?
- How rejected offers are to be handled and retained?

## **Open Houses**

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

## **Personal Safety**

- Licensee personal safety
- Company policies for safety
- Building security/alarms/office closing procedures
- Work injuries/hazardous conditions

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

- Any pre-possession and post possession agreements between Sellers and Buyers shall be in writing
- That licensees must recommend to their clients to seek appropriate counsel (including tax, legal, insurance, etc.) concerning risks associated with pre-possession or post-possession
- Whether Broker approval is necessary before pre-or post-possession, and what forms and/or form versions a licensee shall use.
- The length of the pre-possession or post-possession timing should be addressed and what forms should the agents use.

## **Professional Affiliations**

- Whether membership in a business or trade association is required or recommended and if so, which associations or organization and who is responsible for dues or fees and if there are additional considerations, what are they?

## **Property Management**

Topics to consider, include:

- Adhere to: all laws, regulations, and guidelines including
  - The Arizona Residential Landlord Tenant Act;
  - Federal, state, and local fair housing requirements;
  - County rental registration requirements; and
  - Local transaction privilege tax licensure and remittance requirements.
  - Fair Trade Commission (FTC) with respect to Red Flags Rule.
- Broker approval: Licensees should have the Designated Broker's written approval authorizing licensees to engage in property management. Designated Broker is responsible for all property management activities.

- Education for Property Managers: Specific Property Management education is suggested for all licensees prior to engaging in property management. Education in fair housing laws specific to property management and leasing is recommended.
- Broker policy for a Designated Broker on approved standard forms and clauses, including property management agreements, lease agreement, addendums, and landlord disclosures.
- Security/Confidentiality: All files and accounting documentation must be secured, held confidential at all times (double lock system). Employing Broker should consider a Cyber Insurance Policy for the protection of confidential information.
- Record keeping: All files and accounting documentation are subject to internal and Department of Real Estate audits without notice.
- ARLTA: Strict compliance with the provisions of the Arizona Residential Landlord/Tenant Act.
- Required Disclosures to tenants entering into a lease.
  - Disclosure for Agency: licensees must advise prospective tenants of the agency relationship to the owner/landlord on any property managed, prior to showing the property. Disclosure(s) of agency shall be in writing and signed by all parties – designated form to be used. (add link)
  - Lead-Based Paint Disclosure for if the property was built prior to 1978, Residential Pool Safety Notice prepared by the Arizona Department of Health Services if applicable.

If the Employing Broker/Company requires a landlord to complete a Landlord Property Disclosure on every management agreement.

- Which form would be used for a Landlord Property Disclosure?
- Whether all landlords are required to complete a Landlord Property Disclosure on every listing. If so, which forms are acceptable and are there any exceptions and if so, what would they be?
- What is the Company policy regarding a landlord's refusal to complete a Landlord Property Disclosure or tenant that wishes to waive receipt of the Landlord Property Disclosure?
- How the licensee is to handle any questions that are not answered, appear to be inaccurate, inconsistencies and red flags, or if the landlord refuses to complete a Landlord Property Disclosure.
- Showing: A licensee should accompany all prospective tenants to properties. Under very rare circumstance, should a prospective tenant be given keys to or possession of a property without first being approved for occupancy under a fully executed rental or lease agreement.
- Certain exemptions related to licensure requirements and performance bonus compensation for residential leasing agents or on-site managers are provided under state law.
- Employing Broker shall not assign a real estate employment agreement including property management agreements without the express written consent of all parties to the agreement at the time of the assignment.

All licensees working in the property management field should:

- o Handle all funds as provided by statute (including trust accounts and security deposits).
- o Protect personal information that comes into their possession.
- o Maintain all required licenses.

All brokers should:

- Review and approve all written property management agreements and assure regulatory compliance.
- Approve all marketing and advertising material.

The acceptance of cash for transactions is discouraged. A broker should have written policy when cash may be accepted.

Deposit of funds: All monies (checks, money orders, cashier's checks) should be delivered to broker's office immediately, or within 24 business hours. Please note that state law requires all earnest money **MUST** be deposited next business day, and all other monies not subject to dispute (rents, etc.) **MUST** be deposited within 3 business days.

- Licensee Personal Properties: Any transaction in which a licensee is acting as a principal: a) must have broker's prior written consent, b) **NO MONIES** for lease/rent of a licensee's personal property can be in broker's Trust Account c) **ALL** monies must be held by principal or in a separate trust/fiduciary account. There shall never be any commingling or conversion of clients' funds, i.e., no overdrawn balances. (NOTE: i.e. - A separate account is required for any broker-owned, corporate-owned or Agent-owned/rented properties.)
- Rental Application Policy and Credit Reports: Employing Broker should include rental application policies and, if credit reports are involved, policies must adhere to Federal Fair Credit Reporting Act. Employing Broker should include a Red Flags Rule office policy for the protection of confidential information and prevention of identity theft. A licensee/property manager (whether an employee or independent contractor) should not be authorized to generate, review, e-mail, fax and/or handle a credit report for a client or prospective client, except as permitted and directed in writing by the Employing Broker. Under no circumstances may any Associate (whether an employee or independent contractor) generate a credit report on himself/herself, or on any other person not applying for a property leased through the brokerage. A rental application and signed acknowledgment of rental criteria should be completed and credit reports run on every single applicant over the age of 18 for any rentals over 30 days – no variation or exceptions due to Fair Housing laws. Fair housing laws with respect to reasonable accommodation requests shall be followed. The actual credit report can **NEVER** be given to anyone, including applicant or owner.
- Security Deposits: Including pet deposit may not exceed 1-1/2 times the rent per state law. A potential tenant may voluntarily offer more than 1-1/2 times in pre-paid rent, **not** deposits; however, this must be in writing in the lease that the tenant is voluntarily offering this amount. Broker should have policy regarding the statement of accounting/monies refunded to tenant as prescribed by state law by i.e., 14 business days.

## Prospecting

### Telemarketing – Do Not Call List

- Before making calls to consumers do you or your company verify the number you're calling is not registered on the National Do Not Call Registry? Here are some FAQ's from the Federal Trade Commission (The government agency that protects consumers). More information is available with the FTC, [click here](#).
- Note that the Arizona Office of the Attorney General also has telemarketing guidelines that must be adhered to, [click here](#).
- How to add consumers requesting to be added to your company Do Not Call list
- How to access your company Do Not Call list
- Must comply with Do Not Call list when calling expired/cancelled/For Sale by Owner
- Text messaging also must comply with Do Not Call list, see ARS 44-1282
- Policy on automated dialing systems
- Failure to follow guidelines could result in penalties from the State of Arizona and the Federal Government

## Sales

Topics to consider, include:

- Transaction records for closed sales and leases must be kept for five (5) years
- Records for transactions that are rejected must be kept for one (1) year (A.R.S. § 32-215.01 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 all prior rejected offers for at least five (5) years (A.R.S. § 32-215.01(J) )
- Procedures and timing for turning in documents to the broker
- That the Designated Broker or authorized associate broker review each listing agreement, purchase or nonresidential lease agreement or similar instrument within ten business days of the date of execution, pursuant to A.R.S. § 32-215.01(G).
- Additional requirements or documents that must be turned in prior to a licensee being paid a commission

## Sales Financing Alternatives

- The Employing Broker's policy concerning an offer which proposes to wrap, carry, or subordinate a loan which contains alienation and acceleration clause.
- What a licensee, 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 Employing Broker requires a special review of the contract to see that proper form and verbiage have been used.
- What are the consequences of a licensee proceeding with one of these contracts without first consulting the Designated Broker.

## Signs

- What are requirements for content on all signs
- Any restrictions or policy about signs such as, signed authorization from owner prior to placing signs on property
- Whether or not signs are provided by Company or licensee
- Whether the Company handles sign installation or licensee
- When signs are to be placed and removed

## Special Programs

- What training is required on government programs
- Whether licensees are allowed to discuss programs with clients

## Subdivision Public Disclosure Report

Topics to consider, include:

Licensees assisting property owners defined as subdividers by Arizona law should know the following requirements:

- A subdivider is defined by Arizona law as any person (natural person or legal entity) who offers for sale or lease 6 or more lots, parcels or fractional interests in a subdivision or who causes land to be divided into a subdivision, A.R.S. § 32-2101.
- A subdivision is defined by Arizona law as improved or unimproved land divided for the purpose of sale or lease, whether immediate or future, into six or more lots, parcels or fractional interests, A.R.S § 32-2101.
- Subdividing also applies when offering for sale or lease individual lots in an existing subdivision when the individual or legal entity currently own six or more lots, or have previously owned six or more lots in the subdivision. This includes Condominiums.
- A subdivider shall not offer for sale any lots in a subdivision without first obtaining a Public Report (Disclosure Report), A.R.S 32-2183.
  - **Does not include:** a) leasehold offerings of one year or less, or leasehold offering of agricultural lands, apartments, hotels, pads offices, stores. b) A sale or lease of a lot, parcel or fractional interest that occurs ten or more years after the sale or lease of another lot, parcel or fractional interest and is treated as an independent parcel unless, upon investigation by the commissioner, there is evidence of intent to subdivide.
- Licensees can reference the available [Subdivision Public Disclosure Report “Public Report” brochure](#) on the ADRE website for more information.

- Licensees can search the [ADRE Online Public Database](#) to find developers and developments for available Subdivision Public Reports.

## **Submission of Documents**

- ARS 32-2151.01(G) – the time period required for broker review and initials on documents
- What is the policy of the Company regarding the timeframe for submission of all documents to broker – including Amendments and other contract documents

## **Teams**

Does Company allow teams?

- If so, under what conditions?
- Are agreements required?
- What policies and procedures will Broker have in place to ensure line of supervision remains?
- 

See, SPS No. 2022.02 – Requirements for Teams, [click here](#).

## **Termination Policy**

- What happens when a licensee terminates association with the Company -or- when the Company terminates the licensee
- Review all the licensee’s pending business and determine who will handle the transactions
- Requirements for agreement concerning compensation and assignment of escrow companies
- Disposition of Company property upon the severance/termination of a licensee from the company including any keys, key cards, documents, proprietary/confidential materials, etc.
- Company policy/practice concerning release or non-release of listings, referrals, etc.
- Severance is not effective under licensing laws until the ADRE receives the notice of severance

## **Transferring of Licensees Escrows and Listings**

- Broker policy on whether a Broker will allow transfer of open escrows and listings when the licensee is terminated or severed?
- If Broker allows transfer of escrow or listing, what is the procedure and form to be used? If Broker does not allow the transfer, what is the Broker’s policy related to the process of assigning a new licensee to complete transaction, compensation, etc.?

## Transaction Files, Maintenance of

Topics to consider, include:

- Any lists of documents required in transaction files, including sales, new home sales, land sales, listings, etc. This is a good place to establish checklists or references to the most current checklist required by the Company
- Required timing for each document required, such as timing required to submit to the Designated Broker/manager for review and approval
- What documents require broker's initials or signature
- How rejected offers are to be handled – must be turned in to Designated Broker, and retained by Designated Broker for a minimum of one (1) year.
- Whether listing agents are expected to verify listing information prior to submitting to MLS, or other online listing database
- What documents are required in the file for cancelled transactions
- How files involving a transaction where a licensee is a principal in the transaction are to be handled
- Access to files – who has access and where files are to be kept

Pursuant to A.R.S. 32-2151.01, [click here](#), the Employing 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 Employing Broker.

The Designated Broker may implement any electronic real estate transaction management (TM) program for internal standardization of document storage, so long as the document storage program adheres to the guidelines mandated by statute, rules, and SPS 2010.01, [click here](#).

The Employing 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, and adhere to the following:

Keep employment records, including copies of employment status, for all current and former employees.

Keep records of each transaction and all employment records for a period of at least five (5) years from the date of termination of the transaction or employment.

The records shall be open at all reasonable times for inspection by the commissioner or the commissioner's representatives.

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 ADRE.

Keep copies of earnest money receipts, confirming that the earnest money has been handled in accordance with the transaction, closing statement showing all receipts, disbursements and adjustments, sales contracts and, if applicable, copies of employment agreements.

All licensees shall promptly place any cash, checks or other items of value received as payment in connection with a real estate transaction in the care of the Designated Broker or deposit to escrow company.

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 the broker's license, (except as allowed by section 32-2174 regarding property management accounts).

In addition to the requirements of A.R.S. §§ 32-2151.01, 32-2174, A.A.C. R4-28-802 provides, the broker shall retain true copies of all receipts and disbursements, or copies of executed and delivered escrow closing statement that evidence all receipts and disbursements in the transaction.

## **Transaction Management**

Topics to consider, include:

- If Company uses a transaction management platform, identify how licensees and employees will use the platform.
- Any specific procedures for utilizing Company transaction management (TM) platform or TM services.

## **Trust Accounts**

Topics to consider, include:

- Whether Company has a trust account
- If Company maintains a trust account, what procedures should licensees follow to submit checks to trust account
- Because of sensitivity of the handling of trust funds, it is recommended that the broker understand the information on the ADRE website –

Arizona Department of Real Estate – Auditing FAQs, [click here](#)

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

The broker must make deposits to trust fund accounts by deposit slips. Receipts or other documents 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 of which the monies were deposited.

The broker should have a written policy detailing when outstanding check liabilities are to be added back into the account ledger based on when the issuing bank would consider the check null and void.

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 disbursements 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 Designated Broker shall not permit advance payment of monies belonging to others to be deposited in the Designated Broker's person account or to be commingled with personal monies. It is not considered commingling if, when establishing a trust fund account, a Designated Broker deposits monies not exceeding three thousand dollars (\$3,000) to keep the account open or to avoid charges for an insufficient minimum balance.

## **Unlicensed Assistants**

Does Company allow unlicensed assistants?

- If so, under what conditions?
- Are agreements required?
- Must broker review and sign agreements?

Review ADRE's [Substantive Policy Statement SPS No. 2022.03](#), [click here](#).

## **Vacations/Out of Town**

- What licensees are expected to do when they leave town, are on vacation, or unavailable.
- Who is required to be notified?
- Under what circumstances will the Company designate a substitute
- Is a written agreement required when another licensee fills in?

## **Weapons**

Topics to consider, include:

- A Company may want to include a weapons policy. However, 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 could result in a charge of trespassing.

## Wire Transfer Fraud

This section may include policies and procedures on the following:

- Cyber Security
  - Broker policy on handling cyber security threats and wire fraud.
  - Broker policy on handling of their email passwords, email security, wireless use security, use of electronic devices, software, record keeping/disposal and social media.
  - Broker policy on wire fraud advisories and what form should be used.
  - Broker procedure on licensees reporting cybercrime to Broker.
- Prevention of Wire Fraud
- Reporting Cyber Crime

Arizona Association of REALTORS® - Wire Fraud Advisory and Procedures, [click here](#).

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