

GENERAL INFORMATION - COMPLAINT PROCESS

To begin an investigation, the Department must determine two things:

- That the complaint or information relates to possible violations of real estate statutes or rules.
- That the people and/or entities involved are under the Department's jurisdiction.

A.R.S. § 32-2108 requires complaints filed with the Department be in writing and signed by the complainant. The complaint must allege conduct, which violates Department laws or rules.

If you file a complaint, include:

- Your full name and address and that of each person against whom the complaint is made (the "respondent").
- A clear and concise statement, in detail, describing the facts surrounding the incident(s), including:
 - The time and place of occurrences;
 - Who was involved or present;
 - What activities occurred which you believe to be illegal;
 - The names, addresses and telephone numbers of any witnesses.
- Legible copies of all transaction documents and related correspondence (contracts, closing documents, letters, memos, etc.).

After I file a complaint, what is the process?

The investigator sends each licensee involved a copy of the complaint and a request for a written response. The investigator contacts any other witnesses and may contact the complaining person or the respondent for additional information. After the assigned investigator reviews the information gathered, the Department determines if there is sufficient evidence to support disciplinary action against the licensee. Administrative sanctions are not pursued unless warranted by a preponderance of the evidence. Based upon the investigative findings, one of the following decisions is made:

- Close the file without action.
- Close the case with a non-disciplinary letter of concern.
- Refer the case to the Department's Enforcement and Compliance Division for possible disciplinary action.

What are the possible disciplinary actions that may occur?

If the Real Estate Auditing and Investigation Division forwards the case to the Enforcement and Compliance Division for review, Enforcement and Compliance reviews the case to determine if there is sufficient evidence to pursue disciplinary action.

- If not, the case may be **closed without action**.
- If there is indication of a violation, but it is minor or technical in nature, the Department may issue a **non-disciplinary Letter of Concern**. Although non-disciplinary, a Letter of Concern remains in the file and may be considered when determining the appropriate outcome in any future similar complaint.
- When Enforcement and Compliance finds the evidence is sufficient to support discipline, a settlement agreement may be reached via a **Consent Order** with the licensee. If an agreement is reached, the Department and the licensee sign the Consent Order and it becomes effective immediately. There is no appeal of a Consent Order, since the respondent licensee agrees to it.

- If a Consent Order cannot be negotiated, or the violation is so severe that the Department will only accept suspension or revocation of the license, it **refers the case to the Attorney General's Office**. The Attorney General's Office:
 1. Prepares a Notice of Hearing and Complaint, which is sent to the licensee. The document identifies the statutes or rules the licensee has allegedly violated, and sets a date and time for hearing.
 2. An administrative law judge hears the matter in accordance with the Administrative Procedures Act. After the hearing, the administrative law judge prepares and sends to the Commissioner a recommended Order.
 3. The Commissioner may adopt, modify or reject the order and issues a Commissioner's Final Order. That order may be appealed to the Superior Court.

GENERAL INFORMATION FOR CONSUMERS:

Contracts:

- The consumer needs to fully read any document they are asked to sign and ask any questions before affixing their signature.
- Everything that is important to the consumer **MUST** be expressly written in the contract.
- Verbal agreements and/or understandings cannot be proven by the Department.
- After signature, a purchase/sales contract is a civil matter unless there is a specific issue about a licensee's performance, which may be brought to the Department's attention via a complaint.

Disclosures in a Transaction:

In accordance with the Commissioner's Rule, R4-28-1101 (B), a licensee participating in a real estate transaction must disclose in writing any information the licensee possesses that materially or adversely affects the consideration to be paid by any party to the transaction, including:

- Any information that the seller or lessor is or may be unable to perform.
- Any information that the buyer or lessee is or may be unable to perform.
- Any material defect existing in the property being transferred.
- The existence of a lien or encumbrance on the property being transferred.

In accordance with the Commissioner's Rule, R4-28-1101 (E), 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:

- Licensee has a license and is acting as a principal.
- Buyer or Seller is a member of the licensee's immediate family.
- Buyer or Seller is the licensee's employing broker, or owns or is employed by the licensee's employing broker.
- Licensee or a member of the licensee's immediate family has a financial interest in the transaction other than the licensee's receipt of compensation for the real estate services.

In accordance with the Commissioner's Rule, R4-28-1101 (F), a licensee shall not accept compensation from or represent more than one party to a transaction without the prior written consent of all parties.

NOTE: The above listed disclosure issues reflect only those requirements in the Commissioner's Rules. Refer to other Federal, State, County and/or City statutes or regulations, which may contain additional required disclosures relating to a real estate transaction.

Errors and Omissions Insurance (E & O):

- Real estate brokers and salespersons are not required by statute or rule to carry E & O insurance.

Escrow Accounts:

- All monies entrusted to the broker must be deposited into a neutral escrow depository in Arizona unless otherwise agreed to in writing by all parties to the transaction (A.R.S. § 32-2151).

HOA Boards:

- The names of HOA Board Members are registered with the Arizona Corporation Commission ("ACC") and are available via the ACC's online database search of active corporations.

Listing Agreements / Buyer-Broker Agreements:

Consumers often call the Department because a broker refuses to cancel their listing agreement.

- The consumer should read the agreement thoroughly.
- Listing agreements are usually cancelled only through the mutual consent of the involved parties. The Broker is not required to cancel the listing at the owner's request.
- The listing agreement may obligate the consumer monetarily even after it is cancelled.
- A listing agreement is a contract between the consumer and the broker. The consumer may opt to seek legal advice regarding the consumer's obligations under the contract.

Marketing the Property on an Active Listing Agreement:

The consumer may ask that the broker take the property off the market temporarily and/or cease marketing the property. This request should be made in writing. Such a request does not cancel the listing agreement or the parties' obligations under the listing agreement.

New Home Construction:

Scenario: A consumer who bought a new home construction several months ago and now either doesn't want the home or has had an appraisal and found the house did not appraise for the purchase price.

- This involves contractual issues. The consumer should review the contract to determine what options the contract gives them and seek legal advice.
- Under certain circumstances, the developer may cancel the contract; however, it is at their discretion. If an emergent situation has occurred, speak with the developer and/or seek legal advice.
- Earnest money is refunded based on the terms of the contract. In some contracts, the buyer acknowledges the earnest money is not being held in a trust account but is being turned over directly to the developer. The Department has no jurisdiction over earnest money disputes.
- A consumer who goes to a new home development without a representative may return with a representative; however, the representative may not receive a commission. If a developer tells

a consumer they may not have an agent after they originally register, that is not true; however, the consumer's agent may not be able to collect a portion of the commission.

- A consumer who goes to a new home development without a representative and continues with the contract without a representative is NOT being represented by the developer's agent. A dual agency situation does not exist in this situation.

Offer and Acceptance:

- In the State of Arizona, no contract for real estate exists until the contract is offered and accepted in writing (A.R.S. §44-101.6).
- The Department of Real Estate is prohibited by statute, from pursuing any issue relating to contractual disputes or who has the first position in contract negotiations.

Property Management:

- A **property manager or entity** that manages residential or commercial property for property owners and receives compensation for such activity must be licensed with the Department. The broker or entity manages the property pursuant to a property management agreement (A.R.S. § 32-2173).
- A **property manager** working on behalf of a **Homeowners Association** does not have to be licensed as a real estate salesperson or broker unless their duties include the sales or leasing of properties on behalf of individual property owners.
- **Residential leasing agents or on-site managers of residential rental properties** are not required to be licensed as real estate salespersons or brokers if they conduct activity at only one location during their regular workday and receive no special compensation (A.R.S. § 32-2121(A)(6)).
- A **property manager for one nonresidential income property** or for two or more contiguous nonresidential income properties that are under common ownership and is employed by the owner's licensed management agent is not required to be licensed as a real estate salesperson or broker (A.R.S. § 32-2121(A)(8)).
- A person engaging in **short term rentals**, i.e., occupancies of thirty-one or fewer days in a dwelling unit in a common interest development, is not required to be licensed as a real estate salesperson or broker.

Rebate of Commission:

- A rebate or other monies paid on behalf of the licensee to his client should be paid through escrow upon specific written instructions of the broker.
- The intent to pay such monies to a client should be reported to all parties involved.
- Some loan programs do not allow such rebates.
- "Cash Back" transactions are not appropriate unless the rebate is disclosed in the body of the contract; all parties (broker, loan officer, mortgage lender, title company, etc.) are fully aware of the monies being remitted to the client; and, the monies are clearly disclosed in the Settlement Statement or Closing Disclosure.

Referral or Finder's Fees:

- Referral or finder's fees in residential sales or leasing may not be paid to an unlicensed person.
- Only a licensee may receive compensation resulting from a real estate transaction and such compensation should be paid at the direction of the licensee's broker.

Sale of Manufactured Homes:

- The sale of manufactured homes without land attached requires a license from the Arizona Department of Housing or the Arizona Department of Real Estate.
- Legislation was enacted on August 9, 2017 that authorizes real estate brokers and salespersons licensed by the Arizona Department of Real Estate to sell manufactured homes located in a mobile home park (See [HB2072](#) enacted in 2017).

GENERAL INFORMATION FOR LICENSEES:

Abandonment of Office (A.R.S. § 32-2126 (A)):

- Each employing broker shall have and maintain a definite place of business.
- Change or abandonment of a business location without notice shall automatically cancel the broker's license and shall sever the license of any employed agent.

Address Changes:

- A licensee is required to update his personal information within ten (10) days of any changes made.

Advertising Requirements (Commissioner's Rules R4-28-502 and 503):

- The **name of the Employing Broker** must be displayed in a clear and prominent matter. "Clear and Prominent" is a subjective term, which may mean size or position. On a website, the name of the Employing Broker must be displayed on each and every web page.
- Use of a **Logo**: A logo may not be used without also clearly and prominently displaying the name of the employing broker.
- **Telephone Number**: There is no rule or statute requiring either a telephone number or an address of the employing broker in advertisements.
- **Promotions**: All terms and conditions must be clearly disclosed in writing prior to a person participating in an offer. The advertisement must also contain an expiration date.
- The Designated Broker is responsible for **supervising all advertising** by the brokerage and its employed agents.
- If an agent wishes to advertise a property on which there is an existing listing agreement, he may advertise the property only if he **clearly identifies the listing broker**. The listing agent's permission is not required.
- A licensee advertising his/her own property for sale must use the term **"Owner/Agent"** in any advertisement, as well as disclose his/her status as a salesperson or broker.

Commission Disputes:

- A.R.S. § 32-2152 (B) precludes the Department from entertaining complaints regarding purely civil disputes between licensees concerning the earning, splitting or nonpayment of compensation.

Compensation to Out-of-State Brokers or Salesperson:

- Requires a written cooperation agreement between a licensed Arizona broker and the out-of-state broker in accordance with A.R.S. § 32-2163. A salesperson may not enter into such an agreement.
- This does not preclude an out-of-state broker, with an out-of-state buyer and seller, from legally conducting real estate activity in the broker's state of licensure.
- An out-of-state broker may not advertise Arizona real estate to Arizona consumers without holding an Arizona real estate license.

Complaints filed against a licensee:

- When a complaint is filed against a salesperson or associate broker, the Department also sends a notification to the licensee's broker.
- The licensee has 14 days to respond to the Department's notice of an investigation being initiated.
- The licensee's response should fully respond to the allegations made by the complainant, as well as provide a complete copy of the transaction file.

Disclosures in a Transaction:

In accordance with the Commissioner's Rule, R4-28-1101 (B), a licensee participating in a real estate transaction must disclose in writing any information the licensee possesses that materially or adversely affects the consideration to be paid by any party to the transaction, including:

- Any information that the seller or lessor is or may be unable to perform.
- Any information that the buyer or lessee is or may be unable to perform.
- Any material defect existing in the property being transferred.
- The existence of a lien or encumbrance on the property being transferred.

In accordance with the Commissioner's Rule, R4-28-1101 (E), 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:

- Licensee has a license and is acting as a principal.
- Buyer or Seller is a member of the licensee's immediate family.
- Buyer or Seller is the licensee's employing broker, or owns or is employed by the licensee's employing broker.
- Licensee or a member of the licensee's immediate family has a financial interest in the transaction other than the licensee's receipt of compensation for the real estate services.

In accordance with the Commissioner's Rule, R4-28-1101 (F), a licensee shall not accept compensation from or represent more than one party to a transaction without the prior written consent of all parties.

NOTE: The above listed disclosure issues reflect only those requirements in the Commissioner's Rules. Refer to other Federal, State, County and/or City statutes or regulations, which may contain additional required disclosures relating to a real estate transaction.

Electronic Record Keeping:

The use of Electronic Record Keeping requires the following:

- Transaction and employment records must be maintained in accordance with state statute.
- Electronic records must have a back-up system that duplicates the records and stores them in a secure, offsite location and allows the records to be restored if the broker's electronic data is destroyed.
- The electronic records must be reproducible as a hard copy at the request of the Commissioner or the Commissioner's representative for auditing, inspection or investigation purposes.
- Electronic records must be legible and exact duplicates of the original documents.
- The Broker shall maintain each real estate purchase contract or lease agreement and the electronic transaction folder in a chronological log or other chronologically systematic manner that is easily accessible by the Commissioner or the Commissioner's representative.
- If the electronic records are not stored at the broker's licensed business location, the broker must inform the Commissioner in writing of the legal address of the entity responsible for storing such records.
- Brokers solely using an electronic record storage system must sign a user agreement with the Department of Real Estate allowing unlimited access to the electronic records by the Department.

Electronic Signature:

- The broker's statutory review of contracts and agreements maintained on a transaction management system must be recorded through a dated, secure electronic signature.
- The broker must enforce a written supervision policy requiring personal computer security that, at a minimum, requires each person with electronic signature authority and capability to lock or sign off his/her computer every time he/she walks away from the computer.
- The broker must have a back-up system defining how and when contracts and agreements are reviewed when the computers are down for an extended time.
- The transaction management system must have the ability to create a secure history log of all activity for electronic signatures and broker review, which can be reviewed by the Department.

Errors and Omissions Insurance (E & O):

- Real estate brokers and salespersons are not required by statute or rule to carry E & O insurance.

Escrow Accounts:

- All monies entrusted to the broker must be deposited into a neutral escrow depository in Arizona unless otherwise agreed to in writing by all parties to the transaction (A.R.S. § 32-2151).

HOA's and Real Estate Signs (A.R.S. § 33-1808):

- An HOA may restrict an industry sign to 18" X 24" with a 6" X 24" rider.
- Under the statute, an HOA is not authorized to determine the color scheme of the For Sale sign.

Independent Contractor:

- "Independent Contractor" is an IRS designation for tax purposes only.
- A salesperson or associate broker is authorized to perform real estate activities only on behalf of the broker under which he/she is licensed.
- Unless otherwise specified, all sales contracts, leases and property management agreements belong to the employing broker.
- A real estate broker may supervise and a salesperson or associate broker may conduct real estate activities on behalf of only one real estate entity at a time.

Out-of-State Brokers:

- An out-of-state broker cannot receive a commission or referral fee for conducting real estate activities in Arizona unless they have a written cooperation agreement with an Arizona licensed broker.
- They may not advertise the sale of Arizona property to Arizona residents without being licensed in this state.

Non-Resident Brokers:

- Non-resident brokers are required to notify the Department of the address in Arizona where records are maintained. This information is maintained by the Department's Auditors.

Property Management:

- A **property manager or entity** that manages residential or commercial property for property owners and receives compensation for such activity must be licensed with the Department. The broker or entity manages the property pursuant to a property management agreement (A.R.S. § 32-2173).
- A **community manager** or community management company working on behalf of a **Homeowners Association** does not have to be licensed as a real estate salesperson or broker unless their duties include the sales or leasing of properties on behalf of individual property owners.
- **Residential leasing agents or on-site managers of residential rental properties** are not required to be licensed as real estate salespersons or brokers if they conduct activity at only one location during their regular workday and receive no special compensation (A.R.S. § 32-2121(A)(6)).
- A **property manager for one nonresidential income property** or for two or more contiguous nonresidential income properties that are under common ownership and is employed by the owner's licensed management agent is not required to be licensed as a real estate salesperson or broker (A.R.S. § 32-2121(A)(8)).

- A person engaging in **short term rentals**, i.e., occupancies of thirty-one or fewer days in a dwelling unit in a common interest development, is not required to be licensed as a real estate salesperson or broker.

Real Estate Salespersons and LLC, Corporation and PLLC/PC:

PLLC / PC: A salesperson may have a PLLC / PC for the purpose of commissions being paid into an entity for tax or liability reasons.

- The PLLC / PC is established in the name of the salesperson and registered with the Department.
- A broker may pay compensation to a salesperson through only a PLLC or PC.
- A PLLC or PC may NOT be set up under a fictitious name.

LLC / Corporations: An LLC / Corporation is required to have a broker and be licensed unless it qualifies as an exemption under A.R.S. § 32-2121(A)(17).

- This statute requires that to receive a licensing exemption, the real estate activity (1) is only incidental to the business of the corporation and (2) the officers and employees engaged in the real estate activity do not receive special compensation or other consideration for the activity conducted.
- A corporation set up for the purpose of buying and selling real estate is not conducting real estate activity incidentally to the business of the corporation.

Rebate of Commission:

- A rebate or other monies paid on behalf of the licensee to his client should be paid through escrow upon specific written instructions of the broker.
- The intent to pay such monies to a client should be reported to all parties involved.
- Some loan programs do not allow such rebates.
- “Cash Back” transactions are not appropriate unless the rebate is disclosed in the body of the contract; all parties (broker, loan officer, mortgage lender, title company, etc.) are aware of the monies being provided to the client; and, the monies are clearly disclosed in the HUD1 Settlement Statement.

Referral or Finder’s Fees:

- Referral or finder’s fees for residential sales or leasing may not be paid to an unlicensed person.
- Only a licensee may receive compensation resulting from a real estate transaction and such compensation should be paid at the direction of the licensee’s broker.

Renewal Notices:

- The Department sends courtesy reminders to licensees via the licensee’s e-mail address entered on the on-line licensing system.
- A licensee should check their Public Database Licensure Report and the on-line system to verify the information is correct and update as necessary.

Sale of Manufactured Homes/Trailers:

- The sale of manufactured homes without land attached requires a license from the Arizona Department of Housing or the Arizona Department of Real Estate.
- Legislation was enacted on August 9, 2017 that authorizes real estate brokers and salespersons licensed by the Arizona Department of Real Estate to sell manufactured homes located in a mobile home park.

Signage at Broker's Office (A.R.S. § 32-2126(B)):

Each broker shall cause a sign to be affixed at the entrance to the broker's place of business:

- In a place and position clearly visible to all entering the place of business.
- With the name of the broker.
- The name under which the broker is doing business if other than the broker's given name, and
- Sufficient wording to establish that the person is a real estate broker.

Trust Accounts:

Refer to [Auditing FAQs](#) for information on Broker Trust Accounts.

Unlicensed Activity (Inactive / Expired Licenses):

- If a licensee conducts real estate activity after the expiration or inactivation of his/her license, the licensee has conducted unlicensed real estate activity.
- Immediately upon determining unlicensed activity has been conducted, the licensee should notify his/her broker and contact the Department's Licensing Staff.

"Virtual Offices":

- A licensed broker may establish a location in which his employed agents may utilize the computer, telephone, fax machine, copy machine, etc, provided.
- This location must be licensed as a branch office if real estate activity is conducted from the location, including but not limited to meeting with clients, signing transaction documents, etc., or if the location is advertised as a place of business either by signage at the location, on business cards and letterhead or in other advertising.