



## **Broker Management Clinic #3**

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Instructor: Evan Fuchs



# BROKER SUPERVISION

## Learning Objectives

*Upon completion of this unit, students will be able to:*

1. Identify the duties of a broker as required by the ADRE Commissioner's Rules.
2. Describe the general requirements of the broker employment agreements, who is responsible for supervision and what the consequences for failing to supervise are.
3. Develop a plan for assigning responsibilities to a broker, managers and agents.
4. Describe how agency relationships will be handled and what the standard of care will be.
5. Identify risks associated with different types of agency relationships.
6. Describe how disputes will be handled.

**It's all about.....Risk Management!**

## Section 1

### BROKER SUPERVISION AND CONTROL

#### REASONABLE SUPERVISION

Broker's Duties of Supervision include, and are not limited to, the following items as listing in **R4-28-1103**:

**A.** An employing broker and a designated broker shall 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, procedures, and systems to:

1. Review and manage real estate transactions performed by licensees;
2. Manage the use of unlicensed assistants by licensees;
3. Manage the handling of trust funds;
4. Manage the filing, storing and maintenance of transaction documents;
5. Oversee the delegation of others to act on behalf of the broker;
6. Familiarize salespersons and associate brokers with the requirements of federal, state and local laws relating to the practice of real estate; and,
7. Review all advertising by licensees and the entity to ensure compliance with the Commissioner's rules on advertising.  
(R4-28-1103.A and R4-28-502.G)

### Broker Employment Agreements

#### **Independent Contractor Agreements (ICAs) between an Employing Broker and Salesperson**

##### ***Statutory Non-Employees***

The Internal Revenue Code provides a statutory classification for real estate salespersons as "statutory non-employees" for federal income and employment tax purposes. To qualify for "statutory non-employee" status, the real estate salesperson must:

- Be licensed as a real estate agent;
- Receive substantially all compensation based on sales or other output, rather than the number of hours worked; and
- Have a written contract with the brokerage firm that provides that the salesperson will not be treated as an employee for federal tax purposes.
  - I.R.C. §3508
  - [http://www.irs.gov/irm/part4/irm\\_04-023-005r.html](http://www.irs.gov/irm/part4/irm_04-023-005r.html)

***Other Tax Considerations***

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***Regulatory and Civil Liability considerations***

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***What terms should be considered in an ICA?***

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**Team ICA's**

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**General Requirements of Broker- Client Employment Agreements**

***What risks are associated with failing to understand the general requirements of employment agreements?***

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***What are the statutory requirements for employment agreements?***

- 1.
- 2.
- 3.
- 4.

***Other employment agreement limitations & requirements***

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***Is a written employment agreement required for representation?***

***Is a written employment agreement required for a broker to collect a disputed commission?***

***The Statute of Frauds***

Unless it is in writing – it cannot be litigated!

**A.R.S. §44-101**

**<http://www.azleg.state.az.us/ars/44/00101.htm>**

## Section 2 Agency Relationships and a Broker's Duties

### ***Creating an Agency Relationship***

Agency relationships become extremely important if a dispute arises – the first question that a lawyer will ask a broker when a claim is filed is “who did you represent?”

### ***What risks are associated with agency relationships?***

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### ***How is an agency relationship created?***

Agency is a relationship in which one person (the agent) is authorized to represent the interests of another (the client) in business dealings with third parties.

### ***Does compensation create an agency relationship?***



## Broker's Agency Duties

### **Self-Check: Agency Duties**

*The following questions apply to agency duties as outlined in R4-28-1101.*

1. Brokers are only required to disclose known material defects to the party they represent.
  - a. True
  - b. False
2. The Commissioner's rules require brokers to protect and promote the interests of
  - a. All parties
  - b. Their client
3. Brokers are required to take reasonable steps to assist their client in confirming the accuracy of any information relevant to a transaction.
  - a. True
  - b. False
4. Brokers are required to disclose any present or prospective interest in a transaction
  - a. Within 3 business days of contract signing
  - b. Within 30 days of contract signing
  - c. Prior to contract signing
5. The Commissioner's rules permit a broker to act as a dual agent without prior written consent.
  - a. True
  - b. False
6. Brokers are prohibited from delivering possession prior to the close of escrow unless expressly instructed to do so by the
  - a. Seller
  - b. Buyer
  - c. Escrow agent

7. The requirement to expeditiously perform all duties without delay applies to
  - a. The client
  - b. All parties
  
8. Brokers are not required to provide services consistent with any specific real estate discipline.
  - a. True
  - b. False
  
9. Brokers may receive compensation for goods and services related to a transaction with prior written consent.
  - a. True
  - b. False
  
10. Brokers may provide services to a client outside their field of competence if they first disclose their lack of expertise to the client in writing.
  - a. True
  - b. False

## Section 3

### The Standard of Care and a Broker's Duties

#### **Standard of Care**

***What risks are associated with failure to adhere to the standard of care required in Arizona?***

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***How is the standard of care established in Arizona?***

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***How do courts determine whether a broker has fallen below the standard of care?***

- 1.
- 2.
- 3.

***What is a broker's liability for falling below the standard of care?***

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***How does a broker address the standard of care?***

1. How do you want the sales people to act?
2. Is it addressed in the Policy & Procedure Manual?
3. How will you hold the sales people accountable?

***Where can you find the Commissioner's rules?***

[http://www.azsos.gov/public\\_services/Title\\_04/4-28.htm](http://www.azsos.gov/public_services/Title_04/4-28.htm)

Links are also available on AAR's website.

***How can you stay updated on revisions to the Commissioner's rules?***

Check for updates often. AAR's website also publishes information regarding changes and updates to the Commissioner's rules and other legal policy. The AAR Industry Contacts page provides useful links to government affairs and legislative issues at [http://www.aaronline.com/documents/useful\\_links.aspx](http://www.aaronline.com/documents/useful_links.aspx).

## Section 4

### How Article 26 Changed the Arizona Constitution

#### **The Effect of Article 26**

***What is the significance of the court's decision in State Bar of Arizona v. Arizona Land Title & Trust Co.?***

#### ***Article 26, Section 1. Powers of real estate broker or salesman***

Any person holding a valid license as a real estate broker or a real estate salesman regularly issued by the Arizona State Real Estate Department when acting in such capacity as broker or salesman for the parties, or agent for one of the parties to a sale, exchange, or trade, or the renting and leasing of property, shall have the right to draft or fill out and complete, without charge, any and all instruments incident thereto including, but not limited to, preliminary purchase agreements and earnest money receipts, deeds, mortgages, leases, assignments, releases, contracts for sale of realty, and bills of sale.

***What is the effect of Article 26?***

## Section 5

### Addressing Risk Management

#### **What Are a Broker's Legal Obligations?**

What are a broker's legal obligations? Is this something that each broker decides independently?

Back to:

R4-28-1103

- An employing broker and a designated broker shall 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, procedures, and systems....

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#### **Ethical Obligations?**

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## **TRAC**

Real Estate Brokers must exercise risk management techniques to protect their businesses.

- 1.
- 2.
- 3.
- 4.

## **Resources:**

Arizona Real Estate Law: A Professional's Guide to Real Estate Practice/Michelle Lind, Esq. 2<sup>nd</sup> Edition

<http://www.aaronline.com/documents/mlindbook.aspx>

From NAR – Real Estate Brokerage Essentials – Managing Legal and Business Issues

<http://www.realtor.org/prodser.nsf/products/126-358?opendocument>

NAR: Broker pages

<http://www.realtor.org/brokerage-management>

AAR: Legal Hotline

<http://www.aaronline.com/law-ethics/legal-hotline/>

CRB:

<http://www.crb.com/knowledge/default.aspx>

Real Estate Brokerage: A Management Guide & Workbook, 8th Edition  
by Laurel D. McAdams and Joan M. Sobek (Dearborn  
Education/Publications)

## Team Agreement

This Team Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (the \_\_\_\_\_ Team) and \_\_\_\_\_ (hereinafter "Team Member"). Collectively, \_\_\_\_\_ Team and Team Member are referred herein as the "Parties".

### Recitals

WHEREAS, \_\_\_\_\_ Team, a registered team with \_\_\_\_\_ [Broker], whose members are licensed sales persons with \_\_\_\_\_ [Broker].

WHEREAS, the Parties acknowledge that the \_\_\_\_\_ Team has an established goodwill and name recognition that assists Team Members in obtaining leads and clients for real estate related services;

WHEREAS, Team Member desires to join and become a member of the \_\_\_\_\_ Team;

WHEREAS, \_\_\_\_\_ is the designated Team Leader of the \_\_\_\_\_ Team.

### Term of Agreement

1. **Term.** Team Member is not an employee of the \_\_\_\_\_ Team. By and through this Agreement, Team Member is affiliating with the Team, as an independent contractor. Either party can terminate this agreement without cause, with \_\_\_\_\_ days written notice, delivered in person, by U.S. Mail, through inter-office mail and/or through email. The \_\_\_\_\_ Team, by and through the Team Leader can terminate this agreement at any time, and immediately for cause. For cause includes but is not limited to deceptive or dishonest acts, alienation of a client, loss of business or a client as result of the Team Member's action, any conduct that creates a hostile environment for any other Team Member.



Requirements of Membership on Team

2. **Active License.** Team Member must be, and maintain, an active license with the Arizona Department of Real Estate (ADRE) (sales license or broker's license) while a Team Member and, at all times, have that license in good standing with the ADRE and any and all local realtor boards, including \_\_\_\_\_.
  
  3. **Good Standing with \_\_\_\_\_[Broker].** Team Member must be, and continue to be, licensed with \_\_\_\_\_[Broker] and in good standing at all times, including paying all monthly fees to \_\_\_\_\_[Broker].
  
  4. \_\_\_\_\_[Broker] **Transaction Fees.** The Team Leader will pay \_\_\_\_\_ of the monthly fees owed to \_\_\_\_\_[Broker], this includes \_\_\_\_\_ the \_\_\_\_\_ following:  
\_\_\_\_\_  
\_\_\_\_\_.
  
  5. **Continuing Education and Fees.** Team Member must comply with all ADRE continuing education requirements and be current on licensing and applicable board fees, for board's identified in Section 2 above. Team Member and/or the \_\_\_\_\_ (Circle One) will be responsible for the \_\_\_\_\_ following \_\_\_\_\_ fees  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.
- [Identify Fees to be paid by Team or Team Member, should include who will pay board fees, sign fees, business cards, website].
6. **Litigation Deductibles.** Through the Independent Contractor Agreement ("ICA") with \_\_\_\_\_[Broker], each licensee is responsible for a

deductible to be paid to \_\_\_\_\_[Broker] to go towards litigation costs, settlement and/or litigation losses as a result of a claim against the licensee – as referenced in the ICA - which includes, but is not limited to, demand letters, civil lawsuits, Administrative Actions (including actions by the Arizona Department of Real Estate and/or the Arizona Association of Realtors). Team Member is responsible for the payment of all deductibles arising out of a claim against Team Member and/or \_\_\_\_\_[Broker] at the same percentage of commission it earned or would have earned, for any closed or failed transaction that led to a claim, as set forth in Section 10 below. Team Leader is likewise responsible for the remaining portion of the deductible at the percentage of commission that it retained pursuant to Section 10 below. Should neither Team Leader nor Team Member satisfy this provision of the Agreement and pay the requisite deductible, both Team Member and Team Leader acknowledge that \_\_\_\_\_[Broker] may collect and/or pursue the full amount from either one. The deductible provisions of Team Member's ICA is herein incorporated by this reference and Team Member and Team Leader herein acknowledge that \_\_\_\_\_[Broker] is a Third-party Beneficiary to this provision of the Agreement.

### **Team Member Responsibilities**

- 7. Responsibility.** To assist prospective Buyers and/or Sellers, through leads generated by the \_\_\_\_\_ Team, in acquiring or selling real estate. Team Member is to, at all times, use best practices in assisting the prospective Buyers and/or Sellers at all times represent the \_\_\_\_\_ Team consistent with its good name and reputation in the real estate community.

### **\_\_\_\_\_ Team and/or Team Leader Responsibilities**

8. \_\_\_\_\_ **Team and/or Team Leader Responsibility.**

- To provide leads for Team Member. Leads are split amongst Team Members \_\_\_\_\_ [Designate how leads are assigned, equally, by seniority, by performance].
- To provide the following support services \_\_\_\_\_ [Designate services that will be provided, such as transaction coordinator, office support or the like]
- Team Member will or will not (circle one) receive training in the areas of \_\_\_\_\_.

**Commissions**

9. **Client.** All clients are clients of Team Leader and not the Team Member. This includes clients that are operating under a Buyer Broker Agreement or a Listing Agreement.

10. **Commissions.** Team Member will receive \_\_\_\_\_% of any commission earned a result of a successful closing of a transaction generated by a lead from the \_\_\_\_\_ Team and/or Team Leader. This percentage is based upon the net commission, after all \_\_\_\_\_ [Broker] fees are paid. Other Terms of splits are

\_\_\_\_\_  
\_\_\_\_\_  
[Designate if there is a distinction between Buyer Commissions and Seller Commissions; designate if split increases after certain number of transactions; designate how to handle a lead that turns into repeat business for the Team Member]

11. **Listings.** All listings are \_\_\_\_\_ [Broker] listings.

#### Termination of Agreement

12. **Termination.** As noted above, either party can terminate this agreement, without cause with \_\_\_\_\_ days written notice. Alternatively, for cause, the \_\_\_\_\_ Team can terminate this Agreement effectively immediately. **The Designated Broker for \_\_\_\_\_ [Broker] is to be copied with all notices of termination.** At the time of termination, Team Member may have listings, co-listings, Buyer Broker Agreements and/or may be assisting a buyer or leads. At the discretion of the \_\_\_\_\_ Team, each of these are to be handled as follows:

- **Listings.** Any listings will remain with \_\_\_\_\_ [Broker] and/or the \_\_\_\_\_ Team. Should \_\_\_\_\_ [Broker] and the \_\_\_\_\_ Team elect to allow that listing to transfer to Team Member's new Broker, then a referral fee of \_\_\_\_\_ will be paid to the \_\_\_\_\_ Team.
- **Co-Listings.** All co-listings shall remain with the \_\_\_\_\_ Team, unless co-listing agent, the \_\_\_\_\_ Team and \_\_\_\_\_ [Broker] agree to release the listing to Team Member. Should that occur, then a referral fee of \_\_\_\_\_ will be paid to the \_\_\_\_\_ Team.
- **Buyer Broker Agreements.** All Buyer Broker Agreements are to be with the Team Leader and will remain with the \_\_\_\_\_ Team.
- **Clients and Leads.** Within two (2) days of termination, Team Member shall identify all clients and leads Team Member is currently working with, by providing a list of those individuals to the \_\_\_\_\_ Team and/or Team Leader.

**13. Disputes.** Any and all disputes relating to this Agreement will be subject to mandatory mediation, using an approved mediator through the Arizona Association of Realtors. If that matter is not resolved through mediation, the parties agree to subject the dispute to mandatory and binding arbitration, subject to the rules of the American Arbitration Association, but, through the use of an agreed upon Arbitrator that is also approved through the Arizona Association of Realtors. The prevailing party in any such binding arbitration will be entitled to recover their reasonable attorneys' fees and costs.

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**BROKER SUPERVISION****What level of supervision is a broker required to provide?**

A designated broker is required to exercise reasonable supervision and control over the activities of brokers, salespersons and others in the employ of the broker and acting within the scope of their employment, as well as over the activities of the employing broker (entity) for which a license is required. (R4-28-1103.A, C and D)

**What are the broker's supervision duties?**

The broker's supervision duties include but are not limited to:

1. Review and manage real estate transactions performed by licensees;
2. Manage the use of unlicensed assistants by licensees;
3. Manage the handling of trust funds;
4. Manage the filing, storing and maintenance of transaction documents;
5. Oversee the delegation of others to act on behalf of the broker;
6. Familiarize salespersons and associate brokers with the requirements of federal, state and local laws relating to the practice of real estate; and,
7. Review all advertising by licensees and the entity to ensure compliance with the Commissioner's rules on advertising. (R4-28-1103.A and R4-28-502.G)

**Is a broker required to develop a written Broker Policy Manual?**

Yes, unless the employing broker (entity)

1. maintains one office and employs a designated broker;
2. employs no more than one other licensed person; and,
3. employs no more than one unlicensed person. (R4-28-1103.G)

A model Broker's Policy and Procedure Manual, which was updated in May 2011, is available through the Auditing Division's section of the Department's website.

**What is the required timeframe for broker review of transaction documents?**

The designated broker is required to review each listing agreement, purchase or nonresidential lease agreement or similar instrument within ten (10) business days of the date of execution by placing the Broker's initials and date of review on the same page as the signature of the parties. (A.R.S. § 32-2151.01.G)

**Is there a statutory timeframe for a licensee to submit transaction records to a broker for review?**

No. Although the statutes require the broker to conduct broker review of transaction records within ten (10) business days, there is no statutory timeframe for a licensee to submit transaction records to the broker. The Broker's policies and procedures determine the timeframe for submittal of transaction records for review.

**Who may be assigned broker supervision duties?**

A broker may assign broker supervision duties to an associate broker employed in the designated broker's primary place of business or acting in the capacity as a branch office manager. The broker may not relinquish overall responsibility for supervision and control of the acts of an employing broker's employees. (R4-28-304.B and R4-28-1103.E)

**What broker supervision duties may be assigned to an associate broker?**

The designated broker may authorize an associate broker to

1. review and initial contracts;
2. supervise the activities of licensees;
3. hire or sever a licensee;
4. sign commission checks;
5. be a signer on the branch office trust account or property management trust account;
6. write checks from the broker's trust accounts; and,
7. be responsible for the handling of all trust account funds administered by the branch office.

The designation must be made in writing and a copy retained in the broker's main office for a period of five (5) years. (R4-28-304.B)

**What are the designated broker's options if the broker is temporarily unavailable due to illness or vacation?**

If the designated broker is unable to act within 24 hours, the broker may designate a licensee in the broker's employ or another designated broker to act on the broker's behalf. The designation must be made in writing and may not exceed 30 days in duration. The designee may perform any and all duties the designated broker may lawfully perform, except that a salesperson may not be authorized to hire or sever licensees. A written authorization is required for each temporary absence by the broker. (A.R.S. § 32-2127.D)

**What duties may a salesperson perform when acting as a branch manager?**

A salesperson acting as a branch manager may

1. perform office management tasks that are not statutory duties of the broker; and,
2. be a signer on the broker's trust account and property management trust account. (R4-28-304.B.2)

A salesperson acting as a branch manager may **NOT** hire or sever licensees; perform broker review of transaction documents; issue commission instructions or sign commission checks.

**What activities may an unlicensed assistant in the employ of the broker perform?**

Per the Department's Substantive Policy Statement, SPS No. 2005.04, an unlicensed assistant may:

1. Perform telephone duties, including calls to
  - a. Collect demographic information;
  - b. Solicit interest in engaging the services of a licensee or brokerage;
  - c. set or confirm appointments (with no other discussion) for:
    - A licensee to list or show property;
    - A buyer with a loan officer;
    - A property inspector to inspect a home;
    - A repair/maintenance person to perform repairs/maintenance; and/or
    - An appraiser to appraise property.
  - d. Mortgage and/or title companies to track the status of a file, check daily interest rates and points, whether buyer has been qualified, confirm closing appointment for licensee.
2. Assist a licensee at an open house.
3. Unlock a home for a licensee so that licensee can show a buyer the property or preview the property (no discussion about the property).
4. Deliver documents, as a mail or delivery service only.

**What activities may an unlicensed assistant in the broker's employ NOT perform?**

- Hold / host an open house without an agent being present.
- Perform a walk-through inspection.
- Answer questions relating to a transaction document.
- Give instructions to inspectors, appraisers or maintenance / repair people, which are part of a licensee's regular duties and have a direct relationship to the (potential) transaction.

**PAYMENT OF COMPENSATION TO LICENSED AND UNLICENSED EMPLOYEES**

**To whom may a broker pay compensation for the performance of real estate activities?**

The broker may pay compensation for the performance of real estate activities only to actively licensed salespersons, associate brokers and brokerages. (A.R.S. § 32-2155.A and B)

**May a broker pay compensation to a licensee's corporation, LLC or general partnership?**

No. Corporations, limited liability companies and general partnerships are required to be licensed as real estate entities with a designated broker. (A.R.S. § 32-2125.A)

A licensee may be paid in the name of the licensee OR through a professional corporation (PC) or professional limited liability corporation (PLC or PLLC), which has been registered by the licensee with the Department AND each member or manager holds an active real estate license in Arizona. (A.R.S. § 32-2125.B and A.R.S. § 32-2155.A)

**May a broker pay compensation to a real estate team?**

A broker may pay compensation only to active licensees for the performance of real estate activity. The broker may pay compensation to a licensee as a natural person or through a registered professional corporation (PC) or professional limited liability corporation (PLC or PLLC). (A.R.S. § 32-2155.A)

**May a real estate broker pay a licensee compensation for negotiating a short sale?**

No. Negotiating a short sale for or in anticipation of receiving compensation for short sale negotiation activity requires a loan originator's license issued by the Arizona Department of Financial Institutions (AZDFI) AND employment with a mortgage broker or mortgage banker. All compensation paid for short sale negotiations shall be paid by the mortgage broker or banker to whom the person negotiating short sales is licensed. (Effective July 2010)

**Is the performance of broker price opinions activity for which compensation must be paid through the broker?**

Yes. The performance of broker price opinions is considered licensed real estate activity that may be conducted only on behalf of the employing broker and for which compensation must be paid through the broker to whom the licensee is licensed.

**May a broker pay compensation to an unlicensed assistant based on the sale or lease of a property?**

No. Unlicensed assistants and other unlicensed employees receive compensation based on their work, unrelated to the success of a transaction.

If an unlicensed assistant is paid on any basis that relies on the ultimate sale of a property, then the assistant must be licensed. (Substantive Policy Statement, SPS No. 2005.04)

**May an unlicensed assistant or other unlicensed employees be a member of a real estate team and be paid by the broker as a member of the team?**

No. Only active real estate licensees may be a member of a real estate team. A broker may pay compensation only to active licensees for the performance of real estate activity. The broker may pay compensation to a licensee as a natural person or through a registered professional corporation (PC) or professional limited liability corporation (PLC or PLLC). (A.R.S. § 32-2155.A)

Unlicensed assistants and other unlicensed employees receive compensation based on their work, unrelated to the success of a transaction. If an unlicensed assistant is paid on any basis that relies on the ultimate sale of a property, then the assistant must be licensed. (Substantive Policy Statement, SPS No. 2005.04)

## **OUT-OF-STATE BROKERS – COMPENSATION AND COOPERATION**

**May a broker pay compensation or receive compensation from an out-of-state broker?**

An Arizona licensed broker may pay compensation to and receive compensation from a broker lawfully operating in another state. (A.R.S. § 32-2163.A)

**Under what circumstances may an Arizona broker cooperate with an out-of-state broker who would otherwise require licensure in Arizona?**

An Arizona broker may enter into a written cooperation agreement with an out-of-state broker, as delineated in A.R.S. § 32-2163.C, E and F.

## **PLACE OF BUSINESS AND SIGNAGE**

**Is a broker required to maintain a place of business?**

Yes. A broker is required to establish and maintain a definite place of business. Any change to the broker's place of business must be reported to the Department within ten (10) days of any change. (A.R.S. § 32-2126.A)

**What is the result of a broker abandoning the broker's 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 salesperson or associate broker employed by the employing broker. (A.R.S. § 32-2126.A)

**What are the signage requirements for a broker's place of business?**

A sign must be affixed next to the entrance and clearly visible to all who enter. The sign shall include the name of the broker, the entity or doing business as (dba) name and designation of the broker as a real estate, cemetery or membership camping broker. (A.R.S. § 32-2126.B)



## BROKER RECORDS

### What records is a broker required to maintain?

The broker is required to keep records of all transactions handled by or through the broker, including copies of sales contracts and addenda; earnest money receipts; closing or settlement statements showing all receipts, disbursements and adjustments; residential and/or nonresidential lease agreements; rental agreements; and, if applicable, a copy of the escrow instructions, listing agreement, employment agreements (property management, listing and buyer-broker agreements) and release of earnest monies.

The broker is also required to maintain employment records confirming the hiring, severing or license renewal of all current and former employees, including employment agreements. (A.R.S. § 32-2151.01.A and F)

### How long is the broker required to maintain transaction and employment records?

The broker is required to keep the records of each transaction and employment records for a period of at least five (5) years from the date of the termination of the transaction or employment. (A.R.S. § 32-2151.01.A)

### How long must the broker maintain copies of rejected offers?

The broker is required to keep an original or copy of any document evidencing a rejected offer to purchase real property for at least one year OR five (5) years if a binding contract ultimately results. (A.R.S. § 32-2151.01.H.1)

### May a broker store records at an off-site storage location?

The broker records are to be maintained in the employing broker's principal office or licensed branch office in Arizona. A broker may store records at an off-site storage location in Arizona if the broker provides prior written notification of the street address of the off-site storage location to the department. (A.R.S. § 32-2151.01.A)

### Is a broker required to notify the Department if electronically stored records are maintained at an off-site location?

Yes. The broker is required to provide written notification to the Department if the broker stores electronically maintained records at an off-site location.

### What are the requirements for a broker electronically storing required records?

Per the Department's Substantive Policy Statement, SPS No. 2005.06, the broker may store records electronically if the required transaction, employment and trust account records:

1. Are maintained in a manner allowing reconstruction in the event of destruction of electronic data;
2. The records can be produced, at the broker's expense, in legible, written form ("hard copy") upon the request of the Department for auditing inspection or investigation purposes;
3. The electronic records are exact duplicates of the original; and,
4. The stored records are legible.

## ESCROW ACCOUNTS AND BROKER TRUST ACCOUNTS

### What action is required when a licensee receives monies in connection with a real estate transaction?

Licensees in the employ of the broker shall promptly place all cash, checks, or other items received as payment in connection with a real estate transaction, in the care of the designated broker. (A.R.S. § 32-2151.01.D)

### When and where should a broker deposit funds entrusted to the broker?

The broker should immediately upon receipt place all funds entrusted to the broker in the broker's capacity as a real estate broker in a neutral escrow depository OR a trust account in a federally insured or guaranteed account located in Arizona UNLESS otherwise agreed to in writing by all parties to a transaction. (A.R.S. § 32-2151.A)

### When is an agreement to place monies entrusted to the broker in a depository located outside of Arizona valid?

An agreement to place monies in a depository outside of Arizona is valid if all parties to the transaction agree in writing and either the monies are placed in a property management trust account that is federally insured or guaranteed and the property management agreement contains required disclosures OR if the monies are not deposited in a property management trust account, the broker discloses to the parties to the transaction that potential risks may accrue as the result of depositing the monies in a depository outside Arizona. (A.R.S. § 32-2151.C)

### What are the minimum requirements applicable to each broker's trust account?

In accordance with A.R.S. § 32-2151.B, the minimum requirements for a broker's trust account include:

- Monies shall be used only for the purpose for which the monies were deposited.
- A complete record of all monies received in connection with a real estate transaction in the broker's main or branch office located in Arizona or off-site storage location in Arizona.

- The broker's records shall be kept according to generally accepted accounting principles (GAAP) and shall include a properly descriptive receipts and disbursement journal and client ledger.
- The broker shall maintain a trust account bank reconciliation and client ledger balance on a monthly basis and shall remove any interest earned on a trust account at least once every twelve (12) months.
- A broker shall not permit advance payment of monies belonging to others to be deposited in the broker's personal account or to be commingled with the broker's personal monies.
- When establishing a trust account, the broker may deposit no more than \$3000 of the broker's monies to keep a trust account open or to avoid charges for an insufficient minimum balance.
- Any computerized records shall be kept in a manner allowing reconstruction in the event of description of electronic data.

**Who may act as a signer on the broker's trust account?**

The broker shall grant authority to withdraw monies from the broker's trust account only to persons licensed under the broker's license. (A.R.S. § 32-2151.01.B)

**REAL ESTATE EMPLOYMENT AGREEMENTS****Is a real estate employment agreement required?**

No. A real estate employment agreement (i.e., a written agreement by which a real estate broker is entitled to compensation for services rendered) is not required for a licensee to represent a party in a transaction. (A.R.S. § 32-2151.02.D and E)

**What are the requirements for a real estate employment agreement?**

All real estate employment agreements shall:

1. Be written in clear and unambiguous language;
2. Fully set forth all material terms, including the terms of broker compensation;
3. Have a definite duration or expiration date, showing dates of inception and expiration; and,
4. Be signed by all parties to the agreement. (A.R.S. § 32-2151.02.A)

**May a broker assign a real estate employment agreement to another broker?**

A broker may assign a real estate employment agreement to another broker only with the express written consent of all parties to the agreement at the time of the assignment. (A.R.S. § 32-2151.02.B)