TRANSACTION MANAGEMENT IN ARIZONA

AN ARIZONA ASSOCIATION OF REALTORS® WHITE PAPER
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PURPOSE

The purpose of this White Paper is to serve as a guideline to provide Arizona brokers information and questions to ask as they decide which transaction management (TM) system to choose for their office.

WHAT IS TM

The question of what makes an electronic storage system a TM system is an easy one to answer; any system that holds files can be considered a TM system. Something as simple as a hard drive could, in fact, be considered a TM system. The real question one should ask is; "How much does the system do to keep a broker in compliance?" A simple storage area such as a hard drive can be a TM system by storing files, but it does nothing to help keep a broker in compliance. Systems with complex feature sets and security levels such as SureClose®, SkySlope and many others do quite a bit to keep the broker in compliance; as well as manage the workflow. Both ends of the spectrum and everything in between can be considered TM systems, but some do more to keep the broker in compliance than others do.

HISTORY OF TM IN AZ

In 2008, the Arizona Association of REALTORS® (AAR) began providing brokers with a subsidized TM system to "raise the professionalism" of brokerages across the state; prior to that time, very few companies were using TM systems. After many months of research, AAR selected SureClose® as the TM system; basing their decision on broker security, flexibility and a feature rich environment. After the first 5 years, TM was being used by brokerages representing nearly ½ of all agents in the state; most of which were using the AAR provided product.

As the popularity of TM systems grew, numerous competitors strengthened their product offerings; many brokerages left SureClose® to use other systems that offered new features and user interfaces. AAR realized that TM had become a way of life for brokerages in Arizona; and that because there were so many TM systems in the market providing viable alternatives, that the brokers should be making the conscious business decision for their particular need. No longer did AAR need to provide a TM solution; there were plenty of offerings in the marketplace for brokers to choose from. TM had proven its place as a necessary business tool in Arizona and AAR did not need to "prime the pump" any

further. At the end of 2014, AAR ceased providing TM for brokers; however, brokers did not stop using TM. TM systems competed to vie for broker business, making TM more affordable; with brokers being able to choose the system that best fit their companies.

WHY USE TM

There are many reasons to use a TM system; any of which are, alone, sufficient reason to do so. However, in their totality, they are compelling:

Regulatory compliance – TM systems help keep brokers in compliance. TM system tasks, reminders and notifications help brokers review documents that have time sensitive requirements. Audit trails keep the reviewing information so that, upon inspection at a later time, brokers can prove that reviews happened in a timely basis.

Risk management – Paper files have inherent risk associated with them; they can be lost or damaged. TM systems provide file storage that are separate from the risk of fire, flood or loss. As a result of this risk mitigation, some E&O insurance companies even offer TM using brokerages discounts on policy premiums.

Conservation – The amount of paper involved with most files is astonishing; it's especially so considering that there is a file on both the selling and buying side of the transaction. Many large brokers have rooms full of paper files not only at their offices, but also at storage facilities. The average tree yields anywhere from 10,000 to 20,000 sheets of paper; it doesn't take much to realize that the real estate industry in Arizona alone has gone through a fair number of trees.

Convenience – One of the strongest benefits of having files maintained on the internet is the ability to access them from wherever you are; at any time of day – 24/7. This also benefits brokerages with agents in outlying areas; with a TM system, agents, anywhere in the state can submit documents without physically having to deliver them. Similarly, brokers can also review documents from any location.

Efficiency – TM systems with tasks and notifications make it easy to know deadlines and keep files in compliance. Tasks to keep action items on time and notifications to let brokers and agents know when documents have been uploaded, or when they haven't, ensuring that parties are responsible for time sensitive issues.

Expense reduction – There are many ways a TM system can save a brokerage money:
- Copies
  - Toner
  - Copier equipment
- Paper

- - Purchase of paper stock
  - Storage of files in archives
  - Destruction of archives
  - Gas
    - Delivering documents to and from
  - Manpower
  - Time

BROKER CONTROL

One of the most important features a broker must consider is one of file control. The file belongs to the broker, and the broker must make sure that he/she has control over what happens to the file. Many TM systems have granular controls that allow a broker to determine what actions individuals can make on files; actions such as deleting, editing or creating documents, notes or the files themselves.

In many office workflows, brokers prefer individual agents to create TM files as they're needed, instead of having broker office staff create the files. In doing so, it is important to know what permissions are bestowed on the person creating the file. Some TM systems allow a file creator much more authority than someone who's simply granted access to the file. In these cases, a file creator can also possibly affect a file in a negative manner to the detriment of the broker; they can delete the file or restrict access to the broker.

Since the file belongs to the broker, the question must also be asked as to what happens when the agent leaves the brokerage; does the file remain with the broker – who has control? Those brokerages who have agents create files and are using systems that grant the file creator more authority, actually are allowing those agents the ability to "take the file" with them; removing the broker's access to the file. It's always important to ask the TM system representative what happens when an agent leaves the firm. Ideally, the file remains with the broker and access to the former agent is restricted unless granted by the broker. Many brokers will provide access, sometimes with limited permission sets, to the file once an agent leave the brokerage; however, that is entirely up to the broker's discretion.

The percentages of a successful TM implementation within a brokerage are directly related to the degree which the broker mandates its use. Where brokers make exceptions, the effectiveness of the TM system protecting the broker from compliance issues drops significantly. AAR found this to be true during the early years of its SureClose® offering; brokers struggling to get through a difficult market would allow high producing agents, resisting the changes caused by the new system, to continue doing business as they've done in the past – not using TM. While they acted in an effort to protect their business flow, they were really allowing a large number of files to avoid the scrutiny and tracking that helped keep them in compliance.

Brokers found that mandating the use of TM systems within their organizations made for a more consistent work environment and reduced the amount of risk by allowing the TM system to maintain control of compliance related issues.

Some TM systems allow limited access whereby other parties to the file can access (selected) areas of the file to view, and in some cases, upload information and documents. Some brokers grant this limited access to ancillary parties (such as escrow or inspectors) to enable them to upload documents directly. Still other brokers have provided limited access to the clients themselves so they can watch as certain portions of the file are worked.

BROKER LOG

Many TM systems have reporting features that can also act as the Broker Log. Real estate purchase contracts or lease agreements, nonresidential real estate lease agreements and the transaction folders in which they're kept must be maintained "in a chronological log or other systematic manner that is easily accessible by the commissioner or the commissioner's representatives"[1]. TM systems that automatically generate file numbers and have the ability to generate reports based on those file numbers meet the requirements and can act as the broker log.

When relying on a system generated log, a broker would take care not to delete a file (i.e.; one duplicated accidentally or erroneously) which would create gaps in the numbering system and lead to the ability to "plug-in" files out of order. If a duplicate file is entered into the system, the best practice would be to label the title as "Duplicate" or "In Error", thus keeping the numbering system intact and in sequence while accurately reflecting why the file number is not being used.

TASKS, NOTIFICATIONS & TEMPLATES

One of the most beneficial features a TM system can provide is tasks; also known as "to-do" lists. Tasks, especially when associated with automated notifications, are what keep a file on track and, in most cases, a broker in compliance. Critical dates are identified and parties are informed by email, and sometimes texts, as important milestones are approaching or missed.

Some systems allow the person creating the file to apply task lists all at once, these "templates" can be set up to accommodate specific types of needs. Templating can also dictate the types of documents that need to be added to a file based on need. Brokers can set up "Short Sale" templates which would contain placeholders for certain types of documents and tasks unique to a Short Sale, or lender oriented templates with placeholders for documents and tasks unique to the lenders requirements.

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[1] Sales - A.R.S. §32-2551.01(E), Residential Leasing - A.R.S. §32-2551.01(E) & §32-2175(F), Residential Rental Agreements - A.R.S. §32-2551.01(E) and Property Management Agreements - A.R.S. §32-2575(E)

Templates can be set up for novice agents, guiding them from one task to the next in a detailed manner; or with a minimalist approach for the well-seasoned agent.

Tasks can be triggered by numerous different types of events; they can be set to commence a set number of days after the file is created or before an estimated closing date, a set number of days after a document is uploaded to the file, or at the completion of another task; not unlike a series of dominoes – the completion of one starts the clock for the next.

For many systems, many of these tasks or requirements could have reminders set up; allowing a party to the file to receive a communication that something is needed. Even better, these tasks or requirements could send the broker a communication when the responsible party has failed to act in a timely basis. These tasks and notifications, when attached to compliance critical documents such as the purchase agreement, not only help the broker stay within compliance requirements, but they also facilitate better agent management. The more a file template manages the workflow, the less someone on the broker's staff needs to do so.

A question to ask is whether a TM system allows templating of document placeholders and tasks, or do tasks have to be applied one-at-a-time; which can be a very time consuming process. Are there reminders and notifications that make the responsible party (and the broker) aware of tasks that have not been completed on time?

DEVICE COMPATIBILITY

A factor often overlooked when deciding on a TM system is compatibility; there are many different types of devices that are used by agent, a system must be able to work across many different platforms. Gone are the days when a system could dictate that only one browser or operating system could be used. TM systems must work on all devices; from desktops to tablets to phones. A number of systems still have separate apps for iOS (iPhone) and Android users; however, many more have already turned to responsive design, allowing the user to be on almost any device necessary.

PRICING

One of the largest factors a broker must consider is the overall cost of the system. There are two primary methods that TM systems charge brokers for their services on:

- A per file basis
- A flat rate based on:
    - The number of agents in the brokerage, or
    - The number of agents using the system

Those brokerages with large numbers of agents that are not actively generating listings or closings on a regular basis might prefer to use a system that charges only for activity. While this may be important,

the deciding factor for many brokers is the system features or user interface. If a system is not effectively being used, it's not worth any discount.

There may be other costs involved; some systems charge storage fees for files or access fees for clients that have left to go to another system. A broker should understand all of the possible fees associated with a potential TM system prior to getting into any agreement.

SUPPORT

Another important factor to consider is support; how will you get help to configure and maintain your system? Does your TM system offer live phone support and, if so, what hours is support available? Is there a limit to the number of support calls you can make or is there a charge when calling for assistance?

BROKER REVIEW

A very important feature that is highly recommended is Broker Review. There are several crucial components to Broker Review:

- Notification – An efficient system should not make the broker check time and again to see if there are documents that need review; the system should let the broker know through an email or some "dashboard" feature. Especially for larger brokers; when many files are active, it's far too cumbersome for a broker to look at every file to see when a document that needs reviewing has come in – the system needs to let the broker know.
- Recording Brokers' Actions – The Arizona Department of Real Estate (ADRE) has accepted proof that a broker has seen a document as evidence of review. After all, a signature on a reviewed document merely indicates that the broker has seen it, there can be no proof that the broker actually read the document. As long as the system has a unique, personal and secure login for the broker and the proof that the document has been seen is contained in a secure, unalterable location on the file, ADRE accepts that record as proof of broker review.
- Audit Trail Integrity – The system must contain an audit trail, or history, which records events of activity in the file. This audit trail must be a permanent record, unalterable by any of the users.

DOCUMENT UPLOAD

To assist agents working the files, it is helpful to have easy and convenient ways of uploading notes and documents to the file; especially documents. It's important that, as much as possible, original digital files be uploaded. This is especially true with electronically signed documents as the PDFs contain metadata which could be important in proving their authenticity.

There are a variety of ways an agent can upload documents to a file:

- A browse button that accesses drives that contain the document
- Emailing directly to a file
- Faxing directly to a file
- Integrations to the TM system directly by software (i.e.; DocuSign)
- "Drag-and-Drop" functionality

The more ways an agent has to upload documents, the more likely the agent will find one method that suits his/her need; the more likely they'll use the TM system.

<div align="center">RECORDS RETENTION CONDITIONS AND PERIODS</div>

Many TM systems retain file records for extended periods of time; however, it is important to understand how long and under what conditions they will be saved. Most will only save and make records available while under contract to provide service, while others may only provide save and provide access for set periods of time. It is important that you understand the record retention periods of the TM system you're using, and to accommodate for your needs.

Some TM systems will allow you to archive file records to your own media; hard drives, disc, etc. You need to understand exactly how long, and under what conditions, your files will be saved by your TM system. Leaving a TM system may mean loss of access to files or an expense to access files after leaving. If you've archived files to your own media, it may ensure compliance with Arizona statute and save money.

Records retention conditions as specified by ADRE[2]:

- Backing up records: Transaction and employment records to be maintained pursuant to statute or rule, must be backed-up (duplicated and stored in a secure, offsite location) in a manner allowing restoration in the event electronic data maintained at the principal place of business is destroyed.
- Production of records: Records must be reproducible for the Department, at the broker's expense, in a legible, paper form ("hard copy") upon the request of the Commissioner, or the Commissioner's representative, for auditing, inspection, or investigation purposes. Brokers who maintain electronic records in a computer based TM and/or document storage program may provide the Department with electronic access to records, unless a hard copy is specifically requested by the Department.
- Electronic records maintained in an electronic storage system should be legible, exact duplicates of the original documents.
- Maintenance of a log: Brokers using web based TM and/or document storage programs shall maintain a log in a chronological or other systematic manner that lists each real estate purchase contract or lease agreement, and identifies the file in which these documents are maintained. If

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ADRE – SPS 2010.01

the web based TM and/or document storage program maintains this log or list electronically, it should be made easily accessible upon request by the Commissioner or the Commissioner's representatives. If the web based TM and/or document storage program is not capable of maintaining this log or list electronically, the broker shall maintain a separate list or log in either written or electronic form and shall make it available to the Commissioner or the Commissioner's representative upon request

- Notification requirements: If the file servers containing a broker's web based TM and/or document storage program are directly or indirectly owned by the broker, the broker shall inform the Commissioner in writing of the location of these file servers. If the file servers containing a broker's web based TM and/or document storage program are not directly or indirectly owned by the broker, the broker shall inform the Commissioner in writing of the legal address and name of the entity responsible for storing such records. The broker may be required to show evidence that the broker's electronic records are backed-up in accordance with SPS 2010.01, and SPS 2005.06 addressing "Electronic Record Keeping."   (ADRE has specified that written notice may be provided using the following messaging link found at AZRE.GOV:

    http://services.azre.gov/publicdatabase/messagecenter/createmessage.aspx?subjectid=6)

Records retention periods as specified by Arizona statute[3]:

- Brokers are required to retain brokerage records a chronological log or other systematic manner:
    - Sales - A.R.S. §32-2551.01(E)
    - Residential Leasing - A.R.S. §32-2551.01(E) & §32-2175(F)
    - Residential Rental Agreements - A.R.S. §32-2551.01(E)
    - Property management Agreements - A.R.S. §32-2575(E)
- Records must be retained for the following time frames:
    - Five (5) years for transactions records - A.R.S. §32-2551.01
    - One (1) year for transactions that did not close - A.R.S. §32-2551.01(C)
    - Three (3) years for property management records - A.R.S. §32-2575

CHANGING TM SYSTEMS

Over time, a broker may choose to change TM systems, this can be for a variety of reasons; improved user interface, pricing, more robust feature offering, etc. The question is commonly asked as to whether or not the files from the legacy TM system can be automatically moved or migrated to the new TM system; the answer will invariably be "no".

The structure of any TM system (its ability to allow party information and access, document retention, templating, notes, etc.) is unique. As of this time, no TM system has been able to create an importing

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[3] Arizona Real Estate – A Professional's Guide to Law and Practice (Lind), Page 14

feature that will allow mapping from one system to another. Files can be moved, however this must be done manually; a slow and time consuming process of creating a file in the new TM system and re-entering notes and uploading documents and participant data.

How should a broker proceed when moving to a new TM system? Where possible, it is best for a broker to "draw a line in the sand"; begin using the new TM system on files created from a point in time going forward, leaving the previous files on the legacy system or in archives (see File Retention Periods). Otherwise, the broker could face the daunting task of moving years' worth (and possibly thousands) of files to the new TM system; which could be a task that may need to be repeated again if a new TM system were, again, chosen at some future date. While it may not be palatable for a broker to have to use two systems, as older files are completed, the need for accessing two systems will diminish.

<h2 style="text-align:center">CONCLUSION</h2>

Arizona has been at the forefront of TM in the real estate industry; no other state has been more proactive in proving the value to its brokers.   There now are many TM systems offered for brokers to choose from in the market today; in the end, the best system for the broker is one that fits the individuality of the brokerage, the broker, the agents and staff. What is clear is that TM is an efficient, effective tool to help a brokerage become more productive and risk adverse.

Even with the information provided within, you may still have questions. If you do, please feel free to contact AAR; we will be happy to discuss your needs and concerns. You can contact us at AAR Business Services at support@aaronline.com or (866) 833-7357.

Transaction Management Matrix (https://www.aaronline.com/wp-content/uploads/2015/04/TM-Matrix-2015-04-02.pdf)