



## **Broker Management Clinic #3**

March 30, 2016

Instructor: Jon Kichen

3-Commissioners Standards

*c/e certificates provided by Desert Sage School*



## **Broker Management Clinic #3, Broker Supervision**

**NOTE: The following parts of the various statutes and rules are in most cases, excerpts, thus, are not the full rule or statute.**

### **R4-28-1103 Broker Supervision and Control**

**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:
  - a. Transactions requiring a salesperson's or broker's license; and
  - b. Use of disclosure forms and contracts and, if a real estate broker, real estate employment agreements under A.R.S. § 32-2151.02;
2. Manage:
  - a. Filing, storing, and maintaining documents pertaining to transactions under subsection (A)(5)(a);
  - b. Handling of trust funds; and
  - c. 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; and
5. Review and inspect:
  - a. Documents that may have a material effect upon the rights or obligations of a party to a transaction; and
  - b. Advertising and marketing by the broker and by salespersons, brokers, and others in the broker's employ

**B.** A designated broker shall establish a system for monitoring compliance with statutes, rules, and the employing broker's policies, procedures, and systems.

**C.** A designated broker shall supervise associate brokers, sales- persons, and employees of the employing broker and shall exercise reasonable supervision and control over activities by the employing broker for which a license is required.



**D.** An employing broker is responsible for the acts of all associate brokers, salespersons, and other employees acting within the scope of their employment.

**E.** A designated broker may use the services of employees to assist in administering the provisions of this Section but shall not relinquish overall responsibility for supervision and control of the acts of the employing broker's employees.

**F.** A designated broker who, upon learning of a violation of real estate statutes or rules by a salesperson or associate broker under the broker's supervision, immediately reports the violation to the Department is not subject to disciplinary action by the Department for failure to supervise the salesperson or broker.

**G.** 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 in subsection (A).

### **32-2155. Restriction on employment or compensation of person as broker or salesperson**

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

### **SUBSTANTIVE POLICY STATEMENT No. 2005. 04**

**Description of Practice/Procedure:** In looking at the issue of unlicensed assistants, various aspects must be considered, including what activities the individual will perform and how the individual is paid. If an unlicensed assistant is paid on any basis that relies on the ultimate sale of a property, then that person must be licensed.

**An unlicensed assistant in the employ of a licensed real estate broker may:**

- **Perform telephone duties, to include calls to:**

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

- Deliver documents (as a mail or delivery service only)

**An unlicensed assistant shall not perform the following activities:**

- Hold/host an open house without an agent being present
- Perform a walk-through inspection
- Answer questions relating to a transactional document
- Give instructions to inspectors, appraisers or maintenance/repair people. Because these instructions are part of the licensee's regular duties and there is a direct relationship to the (potential) transaction, a license is required in order to give instructions to inspectors, appraisers or repair/maintenance people

**SUBSTANTIVE POLICY STATEMENT No. 2005. 08**

**Description of Practice/Procedure:** 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.

The same finding applies to similar circumstances for an associate broker.

**32-2153. Grounds for denial, suspension or revocation of licenses; letters of concern; provisional license; retention of jurisdiction by commissioner; definitions**

A. The commissioner may suspend or revoke a license, deny the issuance of a license, issue a letter of concern to a licensee, issue a provisional license or deny the renewal or the right of renewal of a license issued under this chapter if it appears that the holder or applicant, within five years immediately preceding, in the performance of or attempt to perform any acts authorized by the license or by this chapter, has:

8. Represented or attempted to represent a broker other than the broker to whom the salesperson or associate broker is licensed.

**32-2125.01. Issuance of license; multiple licenses; use**

B. Not more than one license shall be issued and outstanding to or in favor of a licensee at any one time, except that a person licensed as a real estate broker or real estate salesperson may engage in cemetery or membership camping sales activities without being separately licensed to engage in these activities. **A real estate licensee may have only one employing broker in each of the following categories:**

1. Cemetery.
2. Membership camping.
3. Real estate.



**32-2151.01. Broker requirements; record keeping requirements; definition**

**B. Except as provided by section 32-2174, subsection C, a broker shall not grant any person authority to withdraw monies from the broker's trust fund account unless that person is a licensee under that broker's license.**

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

**32-2173. Property management agreements; contents, termination**

**A.2. (A Property Management Firm) May:**

**(c) Allow the property management firm's broker to authorize a licensed or unlicensed person in the direct employment of the broker, pursuant to section 32-2174, subsection C, to transfer monies from or to be a signatory on a property management trust account to which the property management firm deposits the owner's monies.**

**32-2127. Licenses for additional places of business; branch office manager; broker's temporary absence**

A. When a broker maintains more than one place of business within the state he shall be required to procure an additional license for each branch office maintained.

B. Branch office licenses shall be issued in the same name as the principal office license is issued, and the license must be posted in the branch office. Branch office signs shall conform to the provisions for the principal office and shall include the designation "branch office".

C. Each branch office shall be under the management of a broker or a licensed salesman.

D. If a designated broker is unable to act within twenty-four hours, he may designate a licensee whom he employs or another designated broker to act in his behalf. The designated broker shall make this designation in writing and shall keep the original designation at his office for one year from its effective date. A copy of this designation must be attached to any hire, sever or renewal form submitted to the department which is signed by the designated broker's designee. This designation shall not exceed thirty days' duration and may authorize the designee to perform any and all duties the designated broker may legally perform, except that a salesperson shall not be authorized to hire or sever licensees. A written designation is required for each temporary absence.

#### **R4-28-304. Branch Office; Branch Office Manager**

**A.** To obtain a branch office license, the designated broker shall submit to the Department before operating the branch office the following information for each branch office of the employing broker on the Application for Branch Office form:

1. The name, date, and signature of the designated broker;
2. The license number and license expiration date of the employing broker;
3. The name, address, telephone, and license number of the main office;
4. The type of employing broker's license;
5. The employing broker's dba name, if applicable;
6. The address, telephone number, and fax number, if any, of the branch office; and
7. The name and license status of the salesperson or broker

who is the branch office manager and the authority granted to the branch office manager, including any designation of authority under subsection (B).

**B. Branch office manager.** A designated broker may authorize in writing an associate broker or salesperson to act as a branch office manager to perform any of the following duties of the Designated Broker at the branch office. This designation does not relieve the designated broker from any responsibilities.

Upon change of the branch manager, the designated broker shall submit a new authorization to the Department within 10 days of the change and shall retain a copy in the broker's main office for five years.

**1. If the branch manager is an associate broker, the associate broker may, when dealing with branch office transactions:**

- a. Review and initial contracts,
- b. Supervise the activity of salespersons and associate brokers,
- c. Hire or sever a salesperson or associate broker,
- d. Sign compensation checks,
- e. Be a signer on the branch office trust account and property management trust account,
- f. Write checks from the broker's trust accounts, and
- g. Be responsible for the handling of all trust account funds administered by the branch manager.

**2. If the branch manager is a salesperson, the salesperson may, when dealing with branch office transactions:**

- a. Perform office management tasks that are not statutory duties of the employing broker, and
  - b. Be a signer on the broker's trust account and property management trust account.
- C. Temporary office.** An additional license is not required for a temporary office established for the original on-site sale of properties within the immediate area of a subdivision or unsubdivided land.

#### **ARTICLE 11. PROFESSIONAL CONDUCT R4-28-1101. Duties to Client**

**H.** The services that a salesperson or broker provides to a client or a customer shall conform to the standards of practice and competence recognized in the professional community for the specific real estate discipline in which the salesperson or broker engages. A salesperson or broker shall not undertake to provide professional services concerning a type of property or service that is outside the salesperson's or broker's field of competence without engaging the assistance of a person who is competent to provide those services, unless the salesperson's or broker's lack of expertise is first disclosed to the client in writing and the client subsequently employs the salesperson or broker.