

STUDENT GUIDE

2022 MANDATORY COURSE

36 Ways to Lose Your License



Developed by

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A Louisiana Real Estate Commission Publication

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Course Syllabus

Instructors: A copy of the syllabus and the course material must be provided for each student in each of your classes. You must modify to include your personal qualifications and background and vendor information.

Roy L. Ponthier, Ph.D., Ed.D., CDEI

Dr. Ponthier is a licensed Louisiana real estate broker, certified real estate instructor, and Director of Executive Training Centers, LLC, an educational services company which offers instructional design and online training through ProEducate, the company's Internet-based education division. ProEducate offers online real estate and mortgage license training as well as Legal Continuing Education in affiliation with Tulane University School of Law.

Dr. Ponthier holds a B.S. degree from Southeastern Louisiana College. His graduate training was taken at Tulane University (M.S. and Ph.D.) and the University of New Orleans (M.Ed. and Ed.D.). He holds the Certified Distance Education Instructor (CDEI) certification awarded by the International Distance Education Certification Center (IDECC/ARELLO), as well as the Distinguished Real Estate Instructor (DREI) designation awarded by the Real Estate Educators Association (REEA) in recognition of exceptional effectiveness in the classroom. His primary interest is in Instructional Design and Psychometrics as applied to distance education and online training.

Dr. Ponthier has served on the faculty of three Universities, has taught classes for The Real Estate Law Society of Loyola University New Orleans College of Law, has served on the Advisory Committee for Business Education of Tulane University, and has chaired college divisions of Computer Science, as well as Education. He held membership in five academic honor societies, as well as MENSA, and is author of more than two dozen internationally published medical research papers. He served on the Leadership Council for the REEA-DREI program and oversees the administration of the DREI examination for awarding of the DREI designation by REEA. Through ProEducate he oversees training for the office of Alcohol and Tobacco Control (ATC) of Louisiana as well as real estate related courses approved by the Louisiana Bar Association.

He was Director of The Center for Computer Education, Inc., which trained teachers in computer science, and was president of Worldwide Information Network, Inc., a provider of Internet and television marketing. He has owned two mortgage companies, as well as a business brokerage company and a residential and commercial real estate company. Since early 2009 Dr. Ponthier has served on a work group for the Nationwide Mortgage Licensing System & Registry (NMLS&R) which is overseen by The Conference of State Bank Supervisors (CSBS) which was authorized by Congress to establish mortgage licensing standards for the country. With this group he helped develop the functional specifications for mortgage pre-licensing and continuing education programs taught in the U.S. He has held membership in the Real Estate Educator's Association, The South Central Educators Group, and the Louisiana Mortgage Bankers Association. Dr. Ponthier's achievements have been documented in **Who's Who** (Oxford Edition), **American Men and Women of Science**, and the **International Who's Who in Education**.

Course Description

The course focuses on causes which when performed in violation of License Law, the Law of Agency, or Rules and Regulations may result in a licensee having their license censured, suspended, or revoked. The 2022 mandatory course will be presented with clearly articulated PowerPoint, reading material that covers each cause highlighted in Louisiana License Law Section 1455, and custom case studies. The scenarios of the case studies involve licensees who are in violation. Each scenario will be presented with best practices to avoid such situations.

Course Goal

Real estate licensees are taught many laws and rules. Section 1455 of the Louisiana Real Estate License Law identifies thirty-six (36) specific causes for censure, suspension, or revocation of license, registration, or certification. Being aware of and having a true understanding of these causes will enable the licensee or registrant to better represent their client.

Course Material

All materials needed for this course are included in this manual. The materials include:

- Course Syllabus
- Timed Course Outline
- Course Content Material (Instructor and Student Manuals)
- PowerPoint Presentation

- Digital versions of all course materials can be found on the LREC website under the Current Licensees Tab on the Vendor/Mandatory Course Materials page or by visiting this link: <https://lrec.gov/current-licensees/vendor/mandatory-course-materials/>

Course Completion Requirements

Students must be present for the full four (4) hours if a live presentation. Students taking Internet based presentations must complete all quizzes and exams with a score of at least 70%. An identity affidavit attesting to the fact that the student has personally completed the course without assistance must be submitted before a certificate of completion is granted.

Vendor Policies and Regulations

Prerequisites

There are no educational prerequisites for this course.

Registration

Any attempt to take this course under an assumed identity will forfeit your right to receive a certificate of completion and may result in sanctions by the Louisiana Real Estate Commission.

Attendance

Students attending a live presentation must sign in before the course and sign out after the course; this course is a four (4) hour presentation, and 100% attendance is required to receive credit for completion. Credit shall not be granted for partial attendance. No exceptions!

Tardiness/Absences

Credit shall not be granted for late arrivals, excessive absences, and/or early departures. Students are not allowed to make up missed portions of a course.

Course Participation

Instructors may not, in any venue, answer questions of a personal or legal nature, and students should not interpret any information received from instructors or course content as being legal advice.

Classroom Rules of Conduct

To provide an atmosphere conducive to learning, students must turn off all electronic devices prior to the start of class. Newspapers, books, magazines, or any other reading materials are not permitted during class presentation. Violations may result in loss of continuing education credit.

ADA Compliance

Upon request, reasonable accommodations will be provided to individuals with a documented disability to assure that an equal opportunity to participate in this course is provided. For further information, contact our office at (555) 555-5555.

Vendor Contact Information: (insert your contact information here)

Phone: (555) 555-5555, weekdays between 8 a.m. and 5 p.m. central time.

E-mail: anyschool@yourschool.com

Address: any town USA

Disclaimer

These materials are used for informational purposes and should not be construed as specific legal advice, nor are they designed to cover every aspect of a legal situation or every factual circumstance that may arise regarding the subject matter included.

This publication is for reference purposes only and readers are responsible for contacting their own attorneys or other professional advisors for legal or contract advice. The comments provided herein solely represent the opinions of the authors and are not a guarantee of interpretation of the law or contracts by any court or by the Louisiana Real Estate Commission.

Course Learning Objectives

Upon completion of this course, the student will be able to:

- Understand the thirty-six (36) causes for censure, suspension, or revocation of a license, registration, or certification.
- Cite why it is important to account for any money that comes into their possession that belongs to others.
- Define commingling and discuss why this must not occur with either money or other property of their principals.
- Discuss the importance of disclosing of dual capacity of agent and undisclosed principal in any transaction.
- List ways in which a licensee may determine who and the number of owners are principals to a listing prior to advertising a property.
- Assess the practicality of placing funds received by a client into the custody of the licensee's broker and state the broker's responsibility upon receipt of said funds.
- Articulate the importance of providing the Agency Disclosure Information Pamphlet and, where applicable, the Dual Agency Disclosure Form.
- Elaborate on the importance of reducing a bona fide offer to writing when a client requests that you submit an offer on their behalf.
- State the reason(s) for disclosing to a buyer all material defects regarding material defects regarding the condition of real estate that you have knowledge of.
- Discuss the relevance of cooperating with the Commission when requested/required to testify at a hearing, presenting documents requested, or any other matter regarding investigations and hearings.
- Summarize the reasoning behind being accurate when advertising.
- Recognize violations managed via citation by the Commission.

Timed Course Outline

I. Introduction and Course Overview (10 minutes)

II. Part 1: Causes 1 – 12 (40 minutes)

10-minute break

III. Part 2: Causes 13 – 24 (50 minutes)

10-minute break

IV. Part 3: Causes 25 – 36 (50 minutes)

10-minute break

V. Part 4: Case Studies (45 minutes)

Case Study 1 – Failure to Report

Case Study 2 – Failure to Annotate

Case Study 3 – Failure to Obtain Written Authority from All Owners to Advertise

Case Study 4 – Multiple Failures Regarding Funds

VI. Exhibit: List of Violations to be Handled Via Citation (5 minutes)

VII. Questions and Answers (10 minutes)

36 Ways to Lose Your License:

The 2022 Louisiana Real Estate Commission Mandatory Continuing Education Course

In the Louisiana Real Estate License Law there are many circumstances where the Louisiana Real Estate Commission has cause to censure a licensee, registrant, or certificate holder. Beyond that, should the licensee's offense be grave enough, the Commission also has the power to conditionally or unconditionally suspend or revoke any license, registration, or certificate issued under the Louisiana Real Estate Law, levy fines or impose civil penalties not to exceed five thousand dollars, or impose continuing education requirements on licensees, registrants, or certificate holders.

In Section 1455 of the License Law, the Commission defined thirty-six (36) specific acts that if, in the opinion of the Commission, a licensee, registrant, or certificate holder is performing or attempting to perform or has performed or has attempted to perform, the guilty party will incur one or more of the aforementioned penalties. Keep this section in mind when you are conducting business. Many of these causes are easily followed by acting ethically and applying sound business practices. Stay focused. If you are unsure what to do, ask your broker. If you are the broker, phone or email the Commission. They are more than willing to offer guidance. Now, let us begin the discussion...

Part 1: Causes 1 – 12

Cause #1:

Committing any act in violation of the Louisiana Real Estate License Law not specified in this Section.

Sure, we will talk about these thirty-six causes, but there are so many other ways to get a free ticket to the Commission's hearing room. Here are two potential circumstances not specified in this section, but in the License Law where violations have occurred...

Section 1446 deals with compensation. It states:

A. No payment of a commission or compensation shall be made by any licensee or registrant to any person who has not first secured a license or registration under the provisions of this Chapter. This Subsection shall not apply to a nonresident broker who is currently licensed in his state of residence.

B. No payment of a commission or other compensation shall be made by any broker to any licensee when the paying broker has knowledge that the receiving licensee has agreed to pay or intends to pay or otherwise deliver a portion of the commission or compensation to an unlicensed person or entity.

C. Associate brokers, salespersons, and timeshare interest salespersons shall not pay or offer to pay any commission or valuable consideration for the performance of any act herein specified.

D. Payment of a commission or compensation may be made to and accepted by former licensees and registrants for transactions negotiated by them while duly licensed or registered by the commission.

E. An active licensee may accept compensation for transactions that were initiated by the licensee while under sponsorship of a former sponsoring or qualifying broker, provided that the compensation is transmitted through the current sponsoring or qualifying broker.

F. An active real estate licensee shall not accept a commission or other valuable consideration for the performance of any act herein specified, or for performing any act relating thereto, from any person, except their sponsoring or qualifying broker.

Summing up this section, you must possess a license or registration if you are to receive compensation of any form. But even this has parameters to stay within. If the broker is aware that their agent intends to give any of the earned compensation to an unlicensed individual, that compensation must be withheld. Also, former licensees of a broker may receive compensation for their duties, but the funds must be transmitted through the licensee's current broker.

Section 1454 centers on false information. While it may be common sense, any person or his agent who files any notice, statement, or other document, required under the

provisions of this Chapter which is false or contains any material misstatement of fact with the Commission is shouting from the mountain top that their desire is to be investigated for their action(s).

Cause #2:

Violating any rule or regulation promulgated by the commission in the interest of the public and consistent with the provisions of this Chapter.

The key word here is ANY. Pick a chapter between 1 and 57. The Rules and Regulations serve as an extension of the Real Estate License Law and assist the Commission in the enforcement and administration thereof. For instance... we have Chapter 25 of Rules and Regulations: Advertising; Disclosures: Representations. This chapter is centered on compliance with advertising information and structure. Certain disclosures are required when the agent is a principal in a transaction or when the advertisement is internet based/print based. Owner authorization for the ad to be placed and accuracy of the information contained in the advertisement are also addressed here.

Cause #3:

Committing any act in violation of the Louisiana Timesharing Act.

Another example of inclusion. Although most of us do not roam about the timeshare sales community; we do need to be aware of the regulatory details of this portion of our industry. If you would like to review this section in all its glory, you can go to The Louisiana Timesharing Act's website: <https://lrec.gov/become-licensed/timeshare/louisiana-timesharing-act/>.

There are many similarities with License Law and Rules and Regulations that you will notice when reading through the Act. One such similarity can be found in section

1131.12, regulations of timeshare advertising. This section resembles License Law’s Section 1455, reason (35): Using advertising that is misleading or inaccurate and/or Chapter 35 of Rules and Regulations: Advertising; Disclosures; Representations.

Cause #4:
**Failure to account for any money coming into his possession
belonging to others.**

This simple statement has many ways to blow up. Deposits connected to an Agreement to Buy or Sell, lease security deposits or monthly rental payments, funds for repairs (property management scenario). This should be a simple cause for censure, suspension, or revocation to avoid. Receive the funds, deliver to the broker (if a salesperson), deposit into the appropriate escrow fund.

Believe it or not, this straightforward procedure goes awry more than you would believe. In many cases it is an innocent ‘holding’ of the funds. Place the check in the file and not the bank. By law, we are to deposit funds immediately. If we do not, we may suffer the consequences.

On the other hand, there is commingling. We will be talking about this in depth a little farther down the line (cause number six) but let us at least get the definition out there for us to ponder. “Commingling” means putting personal funds and funds belonging to other persons in one mass or mixing the funds together so they cannot be identified or differentiated. Whether the transgression is by the salesperson or the broker, this is a grievous offense.

Cause #5:
**Failure to properly disburse money which belongs to others
upon its coming into his possession.**

For this cause, we can refer to Rules and Regulations chapter 27, section 2715, Withdrawal. Here we have eight (8) specific purposes for when it is acceptable to

withdraw funds from a sales escrow checking account, rental trust checking account, or security deposit trust checking account. Those purposes are:

1. upon the mutual written consent of all parties having an interest in the funds.
2. upon court order.
3. to deposit funds into the registry of the court in a concursus proceeding.
4. to disburse funds upon a reasonable interpretation of the contract that authorizes the broker to hold such funds, provided that the disbursement is not made until 10 days after the broker has notified all parties and licensees in writing.
5. to return the funds to a buyer at the time of closing.
6. to cover the payment of service charges on sales escrow checking accounts, rental trust checking accounts, and security deposit trust checking accounts.
7. upon approval by the commission in connection with the sale or acquisition of a licensed entity.
8. to comply with the provisions of R.S. 9:3251 or any other state or federal statute governing the transfer of rents, security deposits or other escrow funds.

The acceptable time frame for deposits to be disbursed is within thirty (30) days of an agreement between the principles in the real estate transaction.

Cause #6:
**Commingling the money or other property of his principals
with his own.**

Once again, we will begin with the definition... “Commingling” means putting personal funds and funds belonging to other persons in one mass or mixing the funds together so they cannot be identified or differentiated.

According to License Law section 2717, Deposits: Funds received in a real estate sales, lease or management transaction shall be deposited in the appropriate sales escrow

checking account, rental trust checking account or security deposit trust checking account of the listing or managing broker unless all parties having an interest in the funds have agreed otherwise in writing.

Simple, but... the possible missteps are there for the tempting. The most obvious would be the broker depositing client funds directly into their personal account.

The less obvious, but perplexing in thought, is the salesperson depositing client funds directly into their personal account. The reason this is perplexing is blatantly obvious. The salesperson should be bringing the contract and deposit check to the broker to deposit into the company's escrow account. A huge red flag should arise in the broker's mind when the two are not handed over together. The guarantee and/or moral of this scenario... The broker will be in Baton Rouge with the salesperson for this offense when it occurs in this manner.

A current issue occurs in the realm of property management. Here is that scenario. A sponsored salesperson is told by their sponsoring broker that the company is not interested in performing property management services; BUT tells the salesperson that they may proceed if they want to. Here's where the rub comes in... The salesperson moves forward with managing property WITHOUT the broker's participation. Monies are deposited directly into the salesperson's banking account, no contract is on file with the sponsoring broker (even though he/she knows, and eventually something goes sideways. There are multiple layers of wrong here, but commingling is at the forefront.

Cause #7:

Accepting, giving, or charging any undisclosed commission, rebate, or direct profit on expenditures made for a principal.

As a fiduciary acting on behalf of the principal (our client), we are held to a high standard when it comes to earnings and disclosure. Our client knows that we will receive commission upon the close of the transaction. If income is realized from sources outside the usual realm, specifically expenditures made for our client, we have raised a red flag.

Example: After discussing repairs or alteration needed to make a house more presentable for sale, our client agrees to having the house painted. We are asked to make the arrangements. Once we contact the vendor, our client is billed, painting is completed, and our client pays, we receive a five percent (5%) rebate/kickback from the painter as a 'thank you.' Cause seven specifies that this act is a violation that could result in censure, suspension, or revocation of our license.

Cause #8:

Representing or attempting to represent a real estate broker or real estate agency other than the licensed broker or agency listed on the real estate license issued by the commission.

Fairly straight forward cause. If I am an agent for QXV Realty, I do not go around attempting to represent myself as (1) Broker Riley of ABC Realty or a representative of ABC Realty. Such deception is most assuredly against the law. The questions here should be... (1) Why would anyone do this? (2) What is there to gain by attempting this? A trip to Baton Rouge for some quality time with the Commission. I am not sure about you, but I do not see a reasonable call for or benefit from such a deceitful action.

Current issue: Agent Sally is transferring their license from ZTG Realty to MDO Realty. The license has been terminated at ZTG but not assigned/activated at MDO. Sally goes out during that interim time frame and represents as being an agent from MDO Realty. In fact, at this time, Sally is an inactive agent and in violation of cause #8.

Cause #9:

Acting in the dual capacity of agent and undisclosed principal in any transaction. However, such a relationship shall not constitute dual agency if the licensee is the seller or lessor of property that he owns or if the property is owned by a real estate business of which the licensee is the sole proprietor and agent and the same is disclosed to the buyer or tenant.

For cause number 9, we will look at Rules and Regulations chapter 3501. It says: The license status of a principal in a real estate transaction, whether individually or through an entity in which an interest is held by the licensee, shall be disclosed in writing to all other principals in the real estate transaction prior to entering into negotiations concerning the execution of a real estate contract.

Simply stated, DISCLOSE. By not declaring that you are the other party in the transaction, you are acting as a dual agent without consent. This type of action is no less severe than a normal dual agency situation where you must have written approval of both buyer and seller in a transaction.

In conclusion... If it is your property or your company's, lay it out in writing for all the world to see. Issue avoided. No violation.

Cause #10:

Guaranteeing or authorizing any person to guarantee future profits which may result from the resale of real property.

We do not have crystal balls, nor do we know what the future holds. We have seen market collapses and other times when prices soar in a seller's markets. The economics of real estate can turn on a dime. How (or why) would we be so negligent to tell a client that they will make a profit on the resale of property they may be interested in purchasing. On one level, this action is like coercion. It is also fabrication at the best and lying/deception at the worst.

Cause #11:

Offering real estate for sale or lease without the written consent of the **ALL owners or his **THEIR** authorized agents. ***
Undivided real estate may be offered for sale or lease with the written consent of the owner of the property to be sold or leased as to his undivided portion of the property.

Rules and Regulations section 2503 states: A. No broker or licensee sponsored by said broker shall in any way advertise property belonging to other persons as being for sale or rent or place a sign on any such property offering the property for sale or rent without **first obtaining the written authorization to do so by all owners** of the property or their authorized attorney in fact. B. Undivided real estate may be offered for sale or lease with the written consent of the owner of the property to be sold or leased as to his undivided portion of the property.

* The red highlighted changes in Cause #11 are by request of a Commissioner that reviewed the course content.

Cause #12:

Offering real estate for sale or lease on terms other than those authorized by the owner or his authorized agent.

We are held responsible to inquire/know if we have all owners on board with a sales transaction. We cannot move forward with the Meat Loaf notion “Two out of three ain’t bad.” Three owners, three signatures. Less than three, no advertising. We can (1) ask the client if they are the only owner, (2) ask them to show you the title, or (3) look it up in the tax records or Office of Conveyances. Not doing so is negligence on our part.

Part B of this is self-explanatory. If there are three owners and one of the three wishes to sell their undivided interest, so be it. We can do this so long as that one person signs off on it and we advertise the property interest correctly.

Law of Agency section 3893 states that a licensee representing a client shall (1) perform the terms of the brokerage agreement between a broker and the client and (2) promote the best interests of the client by seeking a transaction at the price and terms stated in the brokerage agreement or at a price and upon terms otherwise acceptable to the client.

We negotiate a listing or lease agreement with our client to spell out the terms. FOLLOW THEM! If the list price is \$200,000, why would we tell a cooperating agent or an interested buyer to offer less. This is a blatant breach of contract on our part if we do

so. The price and terms are what they are, no less. If the prospective buyer/lessee desires to negotiate with the seller/lessor, fine. We can, and are expected to, do that. It is the nature of our business.

Do your job. Do it correctly. Blowing this cause can damage both your reputation and the reputation of your brokerage. It is probably safe to say that if this occurs, you will no longer be sponsored by your broker... after the complaint has been investigated, you will be going to Baton Rouge for a hearing and being found guilty of violating cause 12.

Part 2: Causes 13 – 24

Cause #13:

Offering any inducement to or in any way encouraging a party to a written contract involving the sale, lease, or management of real estate to break such contract for the purpose of substituting, in lieu thereof, a new contract with another principal or licensee.

Cause number 13 relates to interference with brokerage relationships. Whether the intent is to lure a principal who is in a contractual relationship with another broker or to substitute another principal into an existing contract, regardless of circumstance, is foul territory. Listing agreements, residential agreements to buy or sell, exclusive buyer agency agreements, and lease agreements are legal documents. You do not venture onto that ground.

Cause #14:

Negotiating the sale, exchange, lease, or management of real estate directly with an owner or lessor of the real estate if he knows that such owner or lessor has a written outstanding contract in connection with such real estate granting an exclusive agency or an exclusive right to sell, exchange, lease, or manage the real estate to another broker.

Negotiating with a seller/owner/lessor who is in an exclusive right to sell contract with a licensed broker is a major misstep. If we are working with a buyer who is interested in or making an offer on that seller's/lessor's property, it is our responsibility to contact their agent or broker to discuss or present the offer on our client's behalf. To do otherwise is not only an infraction, but also an unethical maneuver.

Cause #15:

Knowingly making any false representations to any party in a real estate transaction.

Disclosure is a huge element of our fiduciary responsibilities to or for our clients. What we know, unless deemed as confidential information, we must disclose. We do NOT; however, make up things to disclose. Whether it is a portion of the property disclosure form, an issue with title documents, or something that you client may ask you to disclose that both you and they know is untrue, we must not do it. Encouraging or discouraging to either party in the transaction some piece of information that is false covers breaking the law under cause number 15 and could incur consequences on the ethical side of things.

Cause #16:

Acting for more than one party in a real estate transaction without the written acknowledgment of all parties to the transaction.

Dual agency is called into play under this cause. Section 3897A in the Law of Agency states that "a licensee may act as a dual agent only with the informed written consent of all clients. Informed consent shall be presumed to have been given by any client who signs a dual agency disclosure form prepared by the commission pursuant to its rules and regulations." We have a form for this, so use it. A violation of this cause can be easily avoided.

Current infractions come from agents dealing with For Sale by Owners (FSBOs). Agents need to be careful in their actions. One could easily, and unknowingly, make the jump to undisclosed dual agent when offering information to the FSBO seller turns to advice. This can happen with or without representation. Beware the slippery slope.

As a side note to cause 16, be sure that you have both parties to the transaction sign on the same form with little time distance between those signatures. For example: When we have a seller sign a listing agreement, it is best to have them agree to dual agency at this moment. By doing so, we know what our footing will be going forward. When we work with the prospective buyer and they make an offer and sign the dual agency agreement, present this copy to the seller with the offer. By having the seller 're-sign' this copy of the dual agency agreement, both parties to the transaction have agreed in writing with minimal difference in the date of signing.

Cause #17:

Failure by an associate broker or salesperson to place, as soon after receipt as practicable, in the custody of his licensed broker any deposit money or other money or funds entrusted to him by any person dealing with him as the representative of his licensed broker or in connection with any transaction involving the sale, lease, or management of real property.

Simply put, when we receive money or other funds connected with any transaction involving the sale, lease, or management of real property, get the funds in the hands of the broker so that they may deposit said funds into the appropriate escrow account. This should be an easily avoidable cause violation.

Cause #18:

Representing to any lender, guaranteeing agency, or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon.

Cause 18 is one of those 'Why would you even consider doing this?' violations. (1) Doing this verbally is a flat out lie. (2) If you prepare a false document, you are committing fraud with visible proof for the whole world to see. All parties know what has been agreed upon, so document accordingly. Accurately accounting for funds, proper disclosure of information, and care are three fiduciary responsibilities that are violated if we act on this cause.

Cause #19:

Knowingly permitting a sponsored licensee to operate as an individual real estate broker.

As a broker, you are the 'face' of the company and agent of record with the Real Estate Commission. Simply put, it is the broker's name, reputation, and business on the line. There is NO instance when a broker should allow/permit one of their sponsored licensees to act/operate as an individual real estate broker. Any broker that would allow this is immediately putting their license (individual and company) in danger.

Cause #20:

Knowingly permitting a sponsored licensee or an employee to conduct real estate activities in violation of this Chapter.

Cause 20, like cause 19, applies to the broker. Brokers are responsible for the actions of their licensees. While it is true that the sponsored licensee bears responsibility for their actions, it is ultimately their sponsoring broker that 'signs off' on any activity the

licensee does. So, to knowingly permit one of their sponsored licensees or employees to violate anything in the license law, law of agency, or rules and regulations is a gross dereliction of duty. Violating this cause may put the broker's license (individual and company) in jeopardy.

Current scenario: Salesperson John has an unlicensed assistant that works for them at ABC Realty. In the assistant's off time, he/she goes do a little side work for/with an agent from XYZ Realty. This is equivalent to a licensed agent having two sponsoring brokers. In other words... BIG TIME NO!

Cause #21:

Failure of a licensee to provide the parties to a real estate transaction with an agency disclosure informational pamphlet and, where applicable, a dual agency disclosure form.

Amazingly, this is one of the most investigated/violated of the thirty-six causes. Section 1467A of the license law very plainly states that "Licensees shall provide the parties to a real estate transaction with an agency disclosure informational pamphlet, and where applicable, a dual agency disclosure form as mandated under R.S. 9:3897." This is to be done when substantive contact has been made.

"Substantive contact" as defined in law of agency section 3891 (14) is "that point in any conversation where confidential information is solicited or received. This includes any specific financial qualifications of the consumer or the motives or objectives in which the consumer may divulge any confidential, personal, or financial information, which, if disclosed to the other party to the transaction, could harm the party's bargaining position. This includes any electronic contact, electronic mail, or any other form of electronic transmission."

Cause #22:

Failure to advise all parties to a real estate transaction in writing of compensation being received from any source in connection with that real estate transaction.

All participants (agents and clients) are familiar with commission earned at a transaction's completion. There may be times, however, when compensation beyond this traditional source occurs. This is allowed with one condition... disclosure. A simple written statement advising that this is occurring in the transaction is all that is required for the compensation to be legitimized in the eyes of the Commission.

Cause #23:

Failure without just cause to surrender unto the rightful owner, upon demand, any document or instrument received by a licensee or registrant in the course of a real estate transaction.

Cause number 23 is driven by common sense. It is almost unbelievable that this reason is necessary. During the executory phase of a transaction an owner/client may request/demand any or all documents or instruments received by a licensee or registrant at any point in the real estate transaction. When this occurs, acknowledge, and return to the owner/client what they have requested.

Cause #24:

Accepting other than cash as earnest money or good faith deposit unless that fact is communicated to the owner prior to the acceptance of the offer to purchase, and such fact is shown on the face of the purchase and sale agreement.

In today's real estate market, buyers are becoming more creative when it comes to deposits and good faith. Property, crypto-currency, payments toward property outside of the transaction, or other items are becoming a part of the landscape when offers are being made. When such scenarios occur that fact must be communicated to the owner and such fact must be shown on the face of the purchase and sale agreement prior to the acceptance of the offer to purchase.

Part 3: Causes 25 – 36

Cause #25:

Failure of a licensee to inform the buyer and seller at the time an offer is presented that either party may be expected to pay certain costs such as discount points, etc. and the approximate amount of said costs.

There definitely should be dire consequences if we are found guilty of violating cause number 25. As agents, it is part of our fiduciary duty to our client to review all forms that are encountered along our journey from first meeting (agency disclosure) to the closing table. Whether we are preparing an offer with our buyer or writing a listing agreement or presenting an offer to our seller, go over the details.

We are talking dollars and cents here. Who may be expected to pay certain costs such as discount points, etc. and the approximate amount of said costs? This can be the difference between an acceptance and a denial.

Cause #26:

Failure to reduce a bona fide offer to writing when a proposed purchaser requests that a written offer be submitted.

There are times when we can see that an offer frivolous and believe/know that the effort to write up an offer is an exercise in time wasting. Cause #26 tells us that we are not afforded the opportunity to refuse to submit that offer on behalf of our client. Regardless of how absurd an offer may be, our client's 'bona fide' offer must be written/submitted when our proposed buyer requests that a written offer be submitted.

I would be negligent if I failed to mention this scenario. When our client requests an offer be submitted on their behalf that is bogus/frightfully low, we have a duty to educate/counsel them on why the offer is not acceptable and advise them as to what would be a truly bona fide offer that the seller may consider accepting.

Cause #27:

Failure to disclose to a buyer a known material defect regarding the condition of real estate of which a broker, salesperson, or timeshare interest salesperson has knowledge.

One of the cardinal rules in real estate is “disclose, disclose, disclose.” If we know of any material defect that exists regarding the condition of the real estate being sold, DISCLOSE!!!

Here’s the thing... We (the listing agent) should be discussing material defects with the seller to be sure they fully present any defect information in the Residential Property Disclosure Form. If the seller fails to do so AND we have knowledge of any additional defect(s) that is/are not mentioned, we are to disclose. This is the professional, ethical, and proper thing to do.

Cause #28:

Having been finally adjudicated and found guilty for refusing, because of race, color, national origin, sex, or ethnic group, to show, sell, or rent any real estate for sale or rent to qualified purchasers or renters or for any violation of the Fair Housing Act of 1968 or the Louisiana Equal Housing Opportunity Act and/or any amendments thereto or any successor legislation subsequently following.

This next cause deals with severe circumstances, violations of the Fair Housing Act of 1968 and/or the Louisiana Equal Housing Opportunity Act. If we are finally adjudicated and found guilty of refusing, because of race, color, national origin, sex, or ethnic group, to show, sell, or rent any real estate for sale or rent to qualified purchasers or renters or for any violation of either of these two Acts and/or any amendments thereto or any successor legislation subsequently following, it is an almost forgone conclusion that our license will be revoked.

Cause #29:

Having been convicted of a felony or entered a plea of guilty or nolo contendere to a felony charge.

Staying in the courtroom, we now look at a broader spectrum. Louisiana License Law §1450 A. states “It shall be the duty of every licensee, registrant, and certificate holder to notify the commission within ten days by registered or certified mail or by hand delivery of the following actions: (3) Any final conviction of him by a court of competent jurisdiction for forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, theft, or any other felony, or any crime involving moral turpitude.”

Simple and straight forward, conviction or the entering of a plea of guilty or nolo contendere to a felony charge means we report that legal action to the Commission.

Cause #30:

Refusing to appear or testify under oath at any hearing held by the commission.

In my opinion, you or I would have to be brain dead to violate causes 30 – 32, but we will look and discuss each. #30... The Commission is holding a hearing. We are to be a respondent at the hearing. We refuse to appear or testify under oath. Of course, we are in violation. If we get the call/letter/email, show up! If we do not, we get what we deserve.

Cause #31:

Procuring a license, registration, or certificate for himself or anyone else by fraud, misrepresentation, or deceit.

#31... One word question: Why? If we are going through the process of procuring a license, registration, or certificate, what would possess us to commit fraud or misrepresent any information asked on the application? We do have to submit a criminal background check. If it is in this area, we are caught. If it is another matter, it may come out at some point in the future. Why chance it? Tell the truth. It is easier this way.

Current scenario: Applicants are 'misspelling' their name or possibly flipping or changing a number on their social security number attempting to slide through the process. While it may appear that these individuals can get away with this, they do get caught and are disciplined.

The same applies if you are assisting someone other than you in the process of attaining a license. Walk the straight and narrow. You will be glad you did.

Cause #32:

Failure to comply with an order or consent order issued or approved by the commission pursuant to adjudicatory proceedings.

On to #32... We are definitely a few cards shy of a full deck if we pull a violation here. We have had an informal adjudicatory hearing. We admit that violations were committed as alleged, and a stipulations and consent order is recommended which includes the imposition of any sanctions authorized by the Louisiana Real Estate License Law. We accept the sanctions recommended by the hearing officer. The Stipulations and Consent Order is executed before a notary. After all that, we fail to comply with the consent order. I would say what were we thinking, but it is obvious that we are not.

Cause #33:

Failure by a licensee to provide a buyer or seller with a written property disclosure form for sales and certain leases involving residential real property pursuant to R.S. 9:3196 et seq.

The written Residential Property Form is mandatory for all sellers to fill out. If we are the agent for the seller, we must provide it for them to fill out. Once filled out, it is theoretically available for the buyer.

Now let us look at it as the agent working with the buyer. The law speaks of the licensee. If the licensee does not have MLS access (They are not a REALTOR®), it may take a little effort to get the form to provide the client. A question to be pondered: 'Should the listing agent place a few of the property disclosure forms in the listed home?' In my opinion, yes. If the licensee is a REALTOR®), I would recommend giving the form to the client in advance of viewing so it may be reviewed prior arriving at the property.

Current scenario: Agents are working with a FSBO, or a buyer interested in a FSBO. Under usual circumstances where no agent is involved, there may or may not be a Property Disclosure being filled out and presented to interested parties. Once a licensed agent becomes involved, that licensee has 72-hours to provide a Property Disclosure to the seller for completion.

Cause #34:

Engaging in real estate activity or attempting or offering to engage in real estate activity within the state during any period of suspension of a real estate license by the commission or revocation of any real estate license by the commission.

Cause #34 is a bit wordy, but that is because it wants to leave no doubt. If our license has been suspended or revoked by the Commission, we do NOT engage in real estate activity of any form. During this suspended timeframe, we are considered unlicensed. The same is true when revoked. Stay away from everything that surrounds real estate life. There will be plenty of time to practice our profession once the penalty is lifted.

Annual event: Happy New Year! Oops, you forgot to renew your license. Until you submit your renewal and the appropriate fees, your license is suspended. You continue to practice real estate. Happy New Year just became a bit sadder because you are in violation of cause 34.

Cause #35:

Using advertising that is misleading or inaccurate.

When we advertise, state facts, not improvise features that do not exist. For example: An agent is putting together an ad for a property they have just secured the listing for. The lot the home is on backs up to a canal. In the ad, the agent says that the home is a waterfront property. This advertisement is misleading and inaccurate.

Cause #36:

Engaging in any effort, including referral or recommendation of a specific home inspector, with the intent to deceive or defraud.

The safest way to avoid possible disciplinary action with cause #36 is to let decisions fall on your clients. In this instance, avoid the referral. It is best for us to have a list of specialists to give our clients. This list can be home inspectors, termite inspectors, plumbers, or any other professional that may be needed. Giving a list with a minimum of three in each category allows us to recommend without impropriety.

Part 4: Case Studies

While we are discussing the causes that can result in censure, fines, continuing education, suspension, or revocation of our license, it is only fitting that we discuss several case studies to examine how things can play out when we are investigated for a violation, and we are required to be present for an informal or formal hearing.

DISCLAIMER: The following case studies may be actual or demonstrative illustrations. No names of salespersons, brokers, or agencies are real...

Case Study #1: Failure to Report

Broker Bill has pled guilty to a felony. Following the plea, Bill fails to notify the Commission of this fact. Where has Bill dropped the ball and what violation is he guilty of?

Analysis of Case Study #1

Bill was found to be at fault for three (3) violations:

1. La. R.S.37:1455(A)(1): Committing any act in violation of the Louisiana Real Estate License Law not specified in this Section.
2. LSA-R.S.371455(A)(29): Having been convicted of a felony or entered a plea of guilty or nolo contendere to a felony charge.
3. La. R.S. 37:1450(A): It shall be the duty of every licensee, registrant, and certificate holder to notify the commission within ten days by registered or certified mail or by hand delivery of the following actions: (3) Any final conviction of him by a court of competent jurisdiction for forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, theft, or any other felony, or any crime involving moral turpitude.

I began the case studies with a very simple violation to make a point. It is our responsibility to be knowledgeable of Louisiana Real Estate License Law; Agency Relations in Real Estate Transactions; and the Rules and Regulations of the Commission. Any oversight or neglect on our part can/will result in disciplinary action. Bill's simple failure to notify the Commission resulted in their being censured and ordered to pay a fine and administrative costs totaling \$825.00.

Case Study #2: Failure to Annotate **(most common violation)**

Salesperson Sue reviews an offer with her client. After thorough discussion, the client decides to make a counteroffer to the other party in the transaction. Sue's client signs the counteroffer but does not annotate the date and time that this occurred. Sue either does not notice the lack of annotation or decides that it is unnecessary. What is Sue guilty of?

Analysis of Case Study #2

Salesperson Sue has committed two violations:

1. LSA-R.S. 37:1455.A.(2): Violating any rule or regulation promulgated by the commission in the interest of the public and consistent with the provisions of this Chapter.
2. Chapter 39, Subsection 3901.B of the Rules and Regulations of the Commission: The licensee who prepares an offer or counteroffer in a real estate transaction shall ensure that the time of day and date the offer or counteroffer was signed by the offering party are included in the document.

This is a very straightforward rule. Sue should have had her client add the date and time after the signature(s) and all would have complied with the rule.

Amazingly, it is common for a violation of this rule to occur. Whenever a party is signing a document, they must annotate the date and time they are signing. Ingraining this simple rule in our brain can avoid stress and sanctions on our license. In this case, Salesperson Sue was censured, ordered to pay a fine and administrative costs in the amount of \$575.00, and to complete four (4) hours of continuing education in Louisiana Licensing Law.

Sidebar: A current common violation of cause 2 (and related to Chapter 39, subsection 3901.B of the Rules and Regulations of the Commission), is failure to annotate time of day and date in Addendums and Amendments.in addition to the aforementioned offers and counteroffers.

Case Study #3: Failure to Obtain Written Authority from All Owners to Advertise

Seth Jones owns a property located at 372 Joyous Lane. Salesperson Jamie has spoken with Seth and written a listing agreement. Seth signed the listing agreement, as well as authorized in writing that Jamie may advertise the property. Jamie prepares the advertisement for 372 Joyous Lane and places the advertisement. What Seth has failed to mention to Jamie is that he is married. Jamie is unaware of this and does not verify that Seth is the sole owner. The following week Jamie meets Sarah, Seth's wife. Sarah has discovered what Seth has done and is not pleased. Sarah has not agreed to sell the property, much less advertise. Sarah files a complaint. What happens now?

Analysis of Case Study #3

The Commission opens an investigation and finds that Jamie has committed two violations:

1. LSA-R.S. 37:1455 A.(2): Violating any rule or regulation promulgated by the commission in the interest of the public and consistent with the provisions of this Chapter.
2. Chapter 25, Subsection 2503.A of the Rules and Regulations of the Commission: No broker or licensee sponsored by said broker shall in any way advertise property belonging to other persons as being for sale or rent or place a sign on any such property offering the property for sale or rent without first obtaining the written authorization to do so by all owners of the property or their authorized attorney in fact.

Jamie learns a lesson. Ask the client questions and verify ownership of properties they may put under a listing agreement. For their failing to comply with the two articles above, Jamie was censured, ordered to pay a fine and administrative costs in the amount of \$575.00, and to complete four (4) hours of continuing education in Louisiana Licensing Law.

Case Study #4: Multiple Failures Regarding Funds

Salesperson Brian is engaging in property management. This was a side gig performed without his broker's knowledge or approval. Obviously, when money changed hands, it went from the property owner to Brian. Brian would then take the payments and deposit the proceeds into his personal checking or savings account.

This is a true scenario. Where do we even begin an analysis on this Case? So many options...

Analysis of Case Study #4

Salesperson Brian has been a very naughty licensee. The broker was clueless. Money was not accounted for in two places, the broker's records (and appropriate escrow accounts) and the property owner's records. To top it off, there was commingling too!

We have a trifecta of violations happening here. They are:

1. La. R.S. 37:1455(A) (4): Failure to account for any money coming into his possession belonging to others.
2. La. R.S. 37:1455(A)(6): Commingling the money or other property of his principals with his own.
3. La. R.S. 37:1455(A)(17): Failure by an associate broker or salesperson to place, as soon after receipt as practicable, in the custody of his licensed broker any deposit money or other money or funds entrusted to him by any person dealing with him as the representative of his licensed broker or in connection with any transaction involving the sale, lease, or management of real property.

Salesperson Brian received a heap of consequences for his actions. He was censured, suspended for 30 days, and ordered to pay a fine and administrative costs totaling \$2,575.00.

One last tidbit – Part of Brian's management agreement was that he was to make the property owner's mortgage payments. No surprise here, Brian did not. Result... the property owner ultimately lost his house.

Exhibit:

Violations Handled via Citation

The following list is only for violations handled informally...The Commission could fine up to \$5000 and assess court costs & attorney fees. Citation fees cited are first offense.

LREC Licensing Laws

- 1442.A Conducting authorized activity after expiration of license \$325
- 1437. Failure to obtain required education (CE or PL education) \$325
- 1449.1. Failure to use mandated purchase agreement \$150
- 1449.A. Failure to provide copy of document to principal \$150
- 1449.B. Failure to provide all parties to transaction with completed document within five days \$150
- 1449.D. Failure to maintain records for five years \$150
- 1455. A.(9) Failure to disclose dual capacity as agent and principal in a transaction. \$325
- 1455.A.(21) Failure to provide parties with an agency disclosure pamphlet or dual agency form \$150
- 1455.A.(33) Failure to provide written property disclosure form \$150

LREC Rules & Regulations

- Chapter 25 Improper advertising by licensee \$250 *BOTH AGENT & BROKER **
- Chapter 27 Improper name of account, no signature rights for broker, escrow accounts interest bearing \$150
- Chapter 29 Failure to disburse a deposit within 60 days of scheduled closing date or the broker having knowledge that a dispute exists whichever occurs first \$325
- Chapter 31 Failure to report change of address or telephone number \$150
- Chapter 35 Failure to disclose status as a licensee \$150
- Chapter 39 Failure to annotate \$150 (*Most common violation*)