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# LREC 2023 **BROKER MANDATORY** Student Manual

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This course will consist of four modules:

- **Agency Relationships**
- **Personnel Hiring, Training, & Staffing**
- **Use of Technology**
- **Legal & Administrative – Rules Compliance**

Presented by:



LREC Vendor #9050

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# Course Syllabus

## Instructor Qualifications and Background

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

Dr. Ponthier is a licensed Louisiana real estate broker, certified real estate and appraisal instructor, and Director of Executive Training Centers, LLC, an educational services company which offers in-class training in real estate, mortgage finance and appraisal, as well as online training through ProEducate, the company's web-based education division which offers real estate and mortgage finance related courses throughout the United States.

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), as well as the Distinguished Real Estate Instructor (DREI) designation awarded by the Real Estate Educators Association in recognition of exceptional effectiveness in the classroom. Dr. Ponthier has served on the faculty of three Universities, currently teaches classes for The Real Estate Law Society of Loyola University Law School and has chaired college divisions of Computer Science, as well as Education. Since 1988 he has taught real estate related subjects to more than 63,000 students. He is a member of five academic honor societies, as well as MENSA, and author of more than two dozen internationally published scientific papers. 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 in real estate. 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) to help develop the functional specifications for mortgage pre-licensing and continuing education programs taught in the U.S. He is a member of the Real Estate Educator's Association, The South Central Educators Group, and the Louisiana Mortgage Bankers Association, for which he is Chair of the education committee. 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 four main topics: (1) Agency law and agency relationship from the brokers perspective; (2) The functions roles and responsibilities of brokers in relation to employment and supervision of both licensed and unlicensed individuals; (3) The risks associated with technology and wire fraud (4) Common LREC violations.

## **Course Goal**

Brokers will break down the various agency relationships that exist or could exist in the real estate transaction. In addition, brokers will be mindful of their role as a supervisor or both licensed and unlicensed individuals. Brokers will become aware of the various technological schemes affecting brokerages in today's real estate environment. Finally, brokers will discuss common LREC violations and best practices on advising sponsored licensees to avoid them.

## **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 (800) 966-9866.

### Vendor Contact Information:

The administrative offices ProEducate are located in Metairie, Louisiana. We can be reached by telephone at 800-966-9866 from 8 AM to 5 PM, Central time or by email [StudentServices@ProEducate.com](mailto:StudentServices@ProEducate.com).



## **Disclaimer**

These materials are to be 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 author(s) and are not a guarantee of interpretation of the law or contracts by any court or by the Louisiana Real Estate Commission.

# Learning Objectives

Understand agency law from a broker's perspective. What the broker's role is in establishing and maintaining the agency relationship.

Become aware of the brokers responsibility to assist agents with understanding dual agency and their proper role representing each party.

Discuss the functions, roles, and responsibilities of brokers in relation to employment and supervision of both licensed and unlicensed individuals.

Understand the broker is responsible of the actions of their licensees whether they be associate brokers, salespersons or teams. Review the responsibilities when sponsoring each

Review the risks and pitfalls brokers and brokerages can fall prey too relative to electronic documentation, advertising, and cyber security.

Understand the procedures and responsibilities when it comes to maintaining, renewing, and transferring a license.

Become aware of the most common violations and review how the LREC investigates licensees and hold hearings.



# Course Outline

## **I. LAW OF AGENCY**

- A. Definition and Nature of Agency Relationships
- B. Agency Law and Rules
  - a. Client vs. Customer
  - b. Ministerial Acts
  - c. The disclosure pamphlet
- C. Designated Agency
- D. Dual Agency

## **II. PERSONNEL: HIRING, TRAINING, AND STAFFING**

- A. Employment Law
  - 1. Federal
  - 2. State
  - 3. Employee vs. Contractor
    - a. IRS and State Definition
- B. Supervision of Other Licensees
  - 1. Employees
    - a. Licensed & Non-Licensed
  - 2. Independent Contractors
    - a. Written Contractor Agreements
- C. Real Estate Teams and Groups
  - 1. Brokerage rules and registration
  - 2. Licensed members vs, unlicensed members of team or group
  - 3. Risk Management of concern to brokers and teams/groups

## **III. USE OF TECHNOLOGY**

- A. Electronic signatures
- B. Document Delivery & Annotation
  - 1. Purchase Agreement
  - 2. Electronic Communication - Text Messages
- C. Advertising (Print & Internet)
- D. Data Exchange (MLS)
- E. Recordkeeping
- F. Cyber Security Brokerage Risks
- G. MYLREC Portal
- H. ADA Compliance & Disclosure – Websites

#### **IV. LEGAL AND ADMINISTRATIVE RULES COMPLIANCE**

##### **A. Licensing**

1. Maintenance
  - a. Address Changes
  - b. Name Changes
2. Renewal
  - a. Active License
  - b. Inactive License
  - c. Changes to renewal period
3. Reinstatement
4. Transfers
5. Exemptions
6. Activities Requiring a License

##### **B. Violations and Disciplinary Measures**

1. Violations
  - a. Chapter 1455- 36 Ways to Lose Your License
2. Penalties
  - a. Censure
  - b. Fine
  - c. Revoke
  - d. Suspend
  - e. Continuing Education
3. Administrative Actions
4. Investigations and hearings
  - a. Formal Hearings
  - b. Informal Hearings

# PART ONE: AGENCY RELATIONSHIPS

## What is Agency?

Agency is a relationship in which a real estate broker or licensee represents a client by the client's consent, whether expressed or implied, in an immovable property transaction. An agency relationship is formed when a real estate licensee works for a buyer/seller in their best interest and represents them.

Agency relationships can be formed with buyers/sellers and lessors/lessees.

## Agency Terms and Concepts

**Customer** - a person who is not being represented by a licensee but for whom the licensee is performing ministerial acts.

### Licensees Relationship With Customers

Licensees shall treat all customers honestly and fairly.

May perform ministerial acts for customers when representing a client. Performing those ministerial acts shall not be construed in a manner that would violate the brokerage agreement with the client and performing those ministerial acts for the customer shall not be construed in a manner as to form a brokerage agreement with the customer.

A licensee shall not be liable to a customer for providing false information to the customer if the false information was provided by the licensee's client and the licensee did not have actual knowledge that the information was false.

**Client** - one who engages the professional advice and services of a licensee as his agent.

### Licensee Relationship With Clients

Licensees representing clients shall perform the terms of the brokerage agreement between a broker and the client.

Licensee representing clients shall 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.
- Timely presenting all offers to and from the client.
- Timely accounting for all money and property received in which the client has, may have, or should have had an interest.

Licenses representing clients shall exercise reasonable skill and care in the performance of brokerage services.

A licensee representing a client does not breach a duty or obligation to the client by showing alternative properties to prospective buyers or tenants or by showing properties in which the client is interested to other prospective buyers or tenants.

A licensee representing a buyer or tenant client does not breach a duty or obligation to that client by working on the basis that the licensee shall receive a higher fee or compensation based on a higher selling price.

A licensee shall not be liable to a client for providing false information to the client if the false information was provided to the licensee by a customer unless the licensee knew or should have known the information was false.

Licenses have a legal duty to disclose negligent or fraudulent misrepresentation of material information

**Confidential Information** - information obtained by a licensee from a client during the term of a brokerage agreement that was made confidential by the written request or written instruction of the client or is information the disclosure of which could materially harm the position of the client, unless at any time any of the following occur:

- The client permits the disclosure by word or conduct.
- The disclosure is required by law or would reveal serious defect.
- The information became public from a source other than the licensee.

Confidential information shall not be considered to include material information about the physical condition of the property.

Confidential information can be disclosed by a designated agent to his broker for the purpose of seeking advice or assistance for the benefit of the client.

**Designated Agency** - the agency relationship that shall be presumed to exist when a licensee engaged in any real estate transaction, except ministerial acts, is working with a client, unless there is a written agreement providing for a different relationship.

#### **Relationship between licensees and persons**

A licensee engaged in any real estate transaction shall be considered to be representing the person with whom he is working as a designated agent unless there is a written agreement between the broker and the person providing that there is a different relationship or the licensee is performing only ministerial acts on behalf of the person.

### Excerpt from the Agency Disclosure Form

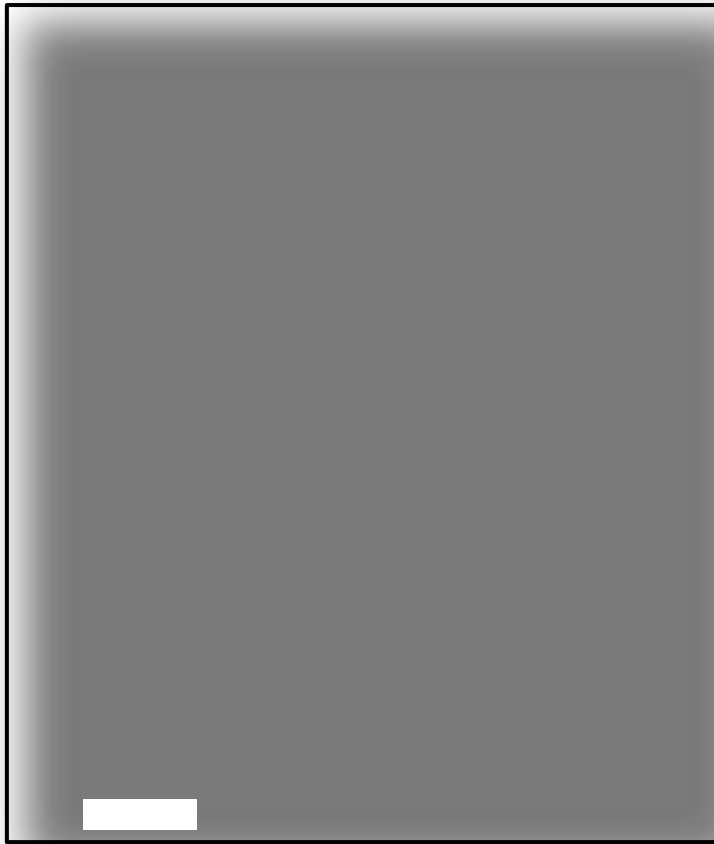
The law presumes that the real estate licensee you work with is your designated agent, unless you have a written agreement otherwise.

No other licensees in the office work for you, unless disclosed and approved by you.

You should confine your discussions of buying/selling to your designated agent or agents only.

**Ministerial Acts** - Those acts that a licensee may perform for a person that are informative in nature. Examples of these acts include but are not limited to:

- Responding to phone inquiries by persons as to the availability and pricing of brokerage services.
- Responding to phone inquiries from a person concerning the price or location of property.
- Conducting an open house and responding to questions about the property from a person.
- Setting an appointment to view property.
- Responding to questions from persons walking into a licensee's office concerning brokerage services offered or particular properties.
- Accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property.
- Describing a property or the property's condition in response to a person's inquiry.
- Completing business or factual information for a person represented by another licensee on an offer or contract to purchase.
- Showing a person through a property being sold by an owner on his or her own behalf.
- Referral to another broker or service provider.



### **Compensation vs. Representation**

The payment or promise of payment of compensation to a broker is not determinative of whether an agency relationship has been created.

### **Termination of an Agency Relationship**

Neither a broker nor any licensee owes any further duties to the client after termination, expiration, or completion of performance of the brokerage agreement, except:

- To account for all monies and property relating to the transaction
- To keep confidential all confidential information received during the course of the brokerage agreement

Unless there is a written agreement stating otherwise.

# Presentation of Agency Disclosure

The agency disclosure must be presented at **first substantive contact**.

## What is substantive contact?

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.

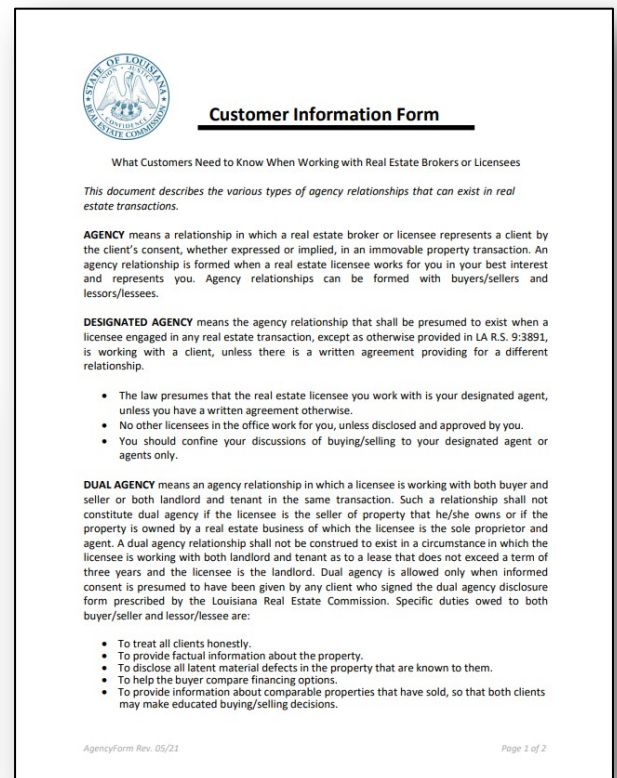
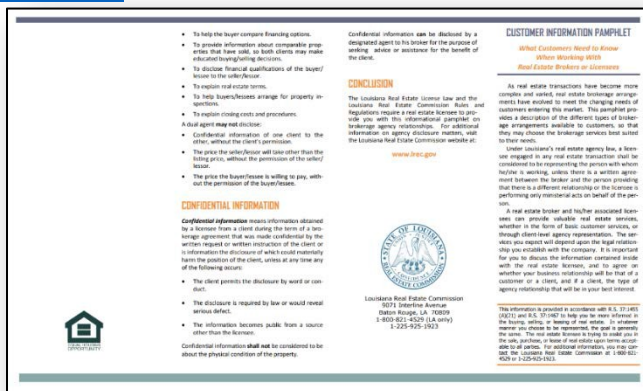
## Rules and Regulations Chapter 37 - §3703. D.

- Provide to prospective sellers/lessors and buyers/lessees.
- At the time when substantive contact is made.
- Ensure that the recipient signs and dates the pamphlet or form.
- The licensee shall sign as a witness to the signature of the recipient.
- The licensee shall retain the signed pamphlet or a copy of the form for five years.
- Nothing in this Chapter or in Chapter 17 of Title 37 shall be construed as to require agency disclosure with regard to a lease that does not exceed a term of three years and under which no sale of the subject property to the lessee is contemplated.

Exception: The agency disclosure is not needed with regard to a lease that does not exceed a term of three years and under which no sale of the subject property to the lessee is contemplated.

There are two forms that are acceptable – The Agency Disclosure Informational Pamphlet or the Agency Disclosure Form. They can be found here: **Agency Disclosure Form (Ex.1)** : <https://lrec.gov/wp-content/uploads/2021/06/Agency-Disclosure-Form.pdf>

**Agency Disclosure Informational Pamphlet (Ex. 2)**: <https://lrec.gov/wp-content/uploads/2018/08/Agency-Disclosure-Pamphlet.pdf>



## Dual Agency

Dual agency is an agency relationship in which a licensee is working with both buyer and seller or both landlord and tenant in the same transaction. Such a relationship shall not constitute dual agency if the licensee is the seller of property that he/she owns or if the property is owned by a real estate business of which the licensee is the sole proprietor and agent. A dual agency relationship shall not be construed to exist in a circumstance in which the licensee is working with both landlord and tenant as to a lease that does not exceed a term of three years and the licensee is the landlord. Dual agency is allowed only when informed consent is presumed to have been given by any client who signed the dual agency disclosure form prescribed by the Louisiana Real Estate Commission. Specific duties owed to both buyer/seller and lessor/lessee are:

- To treat all clients honestly.
- To provide factual information about the property.
- To disclose all latent material defects in the property that are known to them.
- To help the buyer compare financing options.
- To provide information about comparable properties that have sold, so that both clients may make educated buying/selling decisions.<sup>14</sup>
- To disclose financial qualifications to the buyer/lessee to the seller/lessor.
- To explain real estate terms.
- To help buyers/lessees arrange for property inspections
- To explain closing costs and procedures.

Dual agency Disclosure must be given before acting as a Dual agent.

### Can I be a dual agent on a property I own or intend to purchase?

No. According to number nine 9 of the 36 ways to lose your license, 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.”

### Exceptions to dual agency disclosure

“A dual agency relationship shall not be construed to exist in a circumstance in which the licensee is working with both landlord and tenant as to a lease which does not exceed a term of three years and the licensee is the landlord.” R.S. 9:3891, R.S. 9:3897

### Dual Agency Disclosure

The Dual Agency Disclosure form can be found here (Ex. 3): <https://lrec.gov/wp-content/uploads/2021/06/Agency-Disclosure-Dual-Agent.pdf>



## PART TWO: PERSONNEL – HIRING, TRAINING AND STAFFING

### Employment Law

**Employment law** is a broad area encompassing all areas of the employer/**employee** relationship except the negotiation process covered by labor **law** and collective bargaining.

Louisiana employment laws are complex, and the material in this section is not in any way to be interpreted as a substitute for the advice of a competent employment attorney. It is intended to give Louisiana real estate brokers a feel for the complexities involved, and an appreciation for the types of problems that might be encountered by brokers who fail to prepare sufficiently to avoid them.

Employment laws provide a legal framework for the relationship between employers and employees. They also protect employees at all stages from hiring to post-termination. Here are some important things employees in Louisiana should know about employment law.

#### Activity

Answer the following questions:

1. Is the broker's personal assistant, who is a licensee, an employee?
2. Is the man who cleans up the yard and parking lot an employee?
3. Is a licensee who chooses to be paid a salary rather than commissions an employee?

**Answer:** The answer to 1 and 2 is a resounding maybe. The broker is wise to choose a personal assistant who is licensed, but if the assistant is paid commissions on the transactions handled for the brokerage, may be an independent contractor.

The answer to 3 is a little tricky. Brokers do not have to have independent contractors working for the brokerage. Licensees associated with the brokerage may also be employees. However, the IRS has very strict guidelines regarding employees/independent contractors that will be discussed in more detail later in the course. For now, all it is necessary to know is that it's very hard to win against the IRS on this distinction, and advice from a competent tax attorney and/or CPA should be sought.

## Hiring Process

Employers are prohibited by federal law from discriminating against potential employees on the basis of gender, race, color, religion, national origin, age, disability, or status as a protected veteran. This means you will be hiring on the basis of job-related competence, evidence of drug use, criminal record and past employer references.

An employer may not ask job candidates about marital status, religion, gender, race, color, national origin, age, or disability in the course of an employment interview. Employers are urged to hire on a trial period basis, to give both the employer and employee a reasonable time period to determine if the employee is as competent as expected from the job interview and a good fit to the company culture.

Education and experience are fair game for questioning points during an employment interview, and should be major components of the job-related portion of the questions. At the end of the day, the employee hired based on factors other than these may be a source of problems and economic losses.

### Activity

Which of the following questions is a broker allowed to ask in an employment interview?

1. Are you married?
2. When did you graduate from high school?
3. How old are your children?
4. Where do you go to church?
5. What race is your spouse/children?

**Answer:** All of these questions are prohibited.

Employers who base hiring decisions on any of these improper, discriminatory factors risk subjecting themselves to potential liability for employment discrimination.

## Minimum Wage and Overtime

The federal minimum wage of \$7.25 an hour applies to all covered, nonexempt employees. Businesses with more than \$500,000 in annual gross sales, as well as employees of smaller businesses engaged in interstate commerce, are covered by the federal minimum wage, but many employees are exempt. The minimum wage in Louisiana is the same as the federal minimum wage.

The most common exemptions include executives, administrative personnel, professional employees, and outside sales employees. This tends to explain the relatively large numbers of administrative titles found in a lot of small brokerages, but using this ploy may be questioned by the IRS when a broker is unfortunate enough to be audited.

Federal law also requires employers to compensate all covered, nonexempt employees for overtime work in excess of 40 hours a week at the rate of 1.5 times the employee's usual rate of pay. Again, exemptions to the overtime pay requirement include executives, administrative personnel, professional employees, outside sales employees, and commissioned sales employees.

In addition to the federal minimum wage and overtime laws, states can also enact their own minimum wage laws, and these sometimes provide employees with greater benefits than federal law. Louisiana does not have a state minimum wage law.

### **Workplace Safety**

Employers are required to provide employees with a safe work environment under the federal Occupational Safety and Health Act. OSHA covers almost all persons in the workplace with the exception of independent contractors. Workers with a safety complaint may file a complaint with the Occupational Safety and Health Administration and employers can't discriminate in any way against workers who have done so.

Before buying or renting premises, it is a good idea to have them inspected for the presence of mold and/or other noxious substances. It isn't unheard of, especially in older buildings, for workers to suffer from exposure to mold within the premises. It isn't unheard of for workers to suffer from exposure to urethane emissions in buildings of any age. Urethanes are widely used in building materials, and are commonly found in carpeting.

This warning applies only to employees, but it makes sense to keep associate licensees on the road working as opposed to sick at home. These health hazards are real and are prosecutable. A broker with no or few problems with these and other health hazards should be particularly vigilant against them, as they can't count on their bodies to serve as an early warning system.

### **Workers' Compensation**

Workers' compensation is a required no-fault insurance program that provides benefits to workers who are injured on the job. The types of injuries may range from slips-and-falls to physical assault by others. If the premises are the brokers' by ownership or lease, there is a real danger of liability.

Brokers with as few as a single (1) employee must provide that employee with workman's compensation insurance. In some cases, this could also include independent contractors. If the broker is a sole proprietor with no employees, he/she need not provide workman's compensation insurance for him or herself.

Workers' compensation benefits pay medical bills and compensate the worker for a portion of his lost wages. All employers are required to provide workers' compensation coverage.

### **Time Off**

The Family and Medical Leave Act requires employers to give covered employees up to 12 weeks unpaid leave for covered events. FMLA applies to all private employers with **50** or more employees. Independent contractors are not included in the 50 employees.

Louisiana does not have a specific law that gives employees time off from work to vote. However, state law does prohibit employers from penalizing employees for exercising their right to vote.

### **Harassment**

Federal law prohibits all employee harassment. Harassment is any unwelcome conduct on the basis of gender, age, race or color, religion, national origin, or disability. The conduct must either be a condition of continued employment or be so severe and continuous that it creates a work environment that a reasonable person would find abusive or intimidating.

This includes unwelcome touching, use of pet names, ethnic slurs, religious references and political remarks. It also includes building-wide broadcasts that cannot be turned off that includes any of these. This also includes a male supervisor calling female employees (or vice versa) such commonly used names as sweetheart, darling, girl (or boy), etc.

Louisiana is as southern as it gets regarding hugging, kissing or pats on posteriors. If these behaviors don't make anyone uncomfortable, they're fine, but "no one else minds it" is no defense that if a single employee finds them objectionable.

The victim does not have to be the target of the unwelcome conduct; it's enough to prove that the victim is offended by witnessing the harassing behavior. A harassment victim can file a complaint against the employer and, in some circumstances, can sue the employer for monetary damages.

## Termination of Employment

Louisiana is an at-will employment state. An employer can usually fire an employee for any reason at any time.

An **exception** exists when an employment contract exists between the parties which limits the employer's ability to terminate the employment relationship at will.

Additionally, employers may not fire employees for illegal reasons, such as employment discrimination based on age, race, or gender.

Employers cannot lawfully fire workers in retaliation against complaints made against the employer, including workers' compensation claims, reports of unsafe work environments, or discrimination.

Louisiana law requires that employers deliver final paychecks to terminated employees **on or before** the next scheduled pay date or 15 days from the date of termination. The final paycheck must include any accrued vacation time if the employee is entitled to compensation under the employer's established policies.

## Post-Employment Benefits

If an employee's job is terminated by the employer, the employee may be eligible to receive unemployment compensation benefits.

To be eligible for unemployment, the employee must be unemployed through no fault of his own, be able and willing to work, seek full time employment, and file a claim for benefits.

Additionally, former employees may be entitled to continuation of their health insurance at the employee's expense under the *Consolidated Omnibus Budget Reconciliation Act (COBRA)*. COBRA laws apply only to employers with **20** or more employees. Independent contractors are not counted as part of the 20.

## Employee vs. Independent Contractor

### Independent Contractor Status

It is very important for principal or managing brokers to thoroughly understand what constitutes independent contractor status. Independent contractor status is a tax term, and is regulated by the Internal Revenue Service. This means the IRS is the final authority over whether your brokerage is following its guidelines regarding independent contractor or employee status.

Independent contractor status begins with an independent contractor contract. The contract is between the brokerage and the contractor, and should be signed, dated, and reviewed at regular intervals.

Independent contractor status is of such importance to most real estate brokerages that the IRS guidelines are reproduced below.

### **Independent Contractor (Self-Employed) or Employee?**

It is critical that business owners correctly determine whether the individuals providing services are employees or independent contractors.

Generally, you must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to an employee. You do not generally have to withhold or pay any taxes on payments to independent contractors.

#### **Select the Scenario that Applies to You:**

- **I am an independent contractor or in business for myself**  
If you are a business owner or contractor who provides services to other businesses, then you are generally considered self-employed. For more information on your tax obligations if you are self-employed (an independent contractor), see our Self-Employed Tax Center.
- **I hire or contract with individuals to provide services to my business**  
If you are a business owner hiring or contracting with other individuals to provide services, you must determine whether the individuals providing services are employees or independent contractors. Follow the rest of this page to find out more about this topic and what your responsibilities are.

#### **Determining Whether the Individuals Providing Services are Employees or Independent Contractors**

Before you can determine how to treat payments you make for services, you must first know the business relationship that exists between you and the person performing the services. The person performing the services may be -

- An independent contractor
- An employee (common-law employee)
- A statutory employee
- A statutory nonemployee

In determining whether the person providing service is an employee or an independent contractor, all information that provides evidence of the degree of control and independence must be considered.

## Common Law Rules

Facts that provide evidence of the degree of control and independence fall into three categories:

1. Behavioral: Does the company control or have the right to control what the worker does and how the worker does his or her job?
2. Financial: Are the business aspects of the worker's job controlled by the payer? (these include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
3. Type of Relationship: Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

Businesses must weigh all these factors when determining whether a worker is an employee or independent contractor. Some factors may indicate that the worker is an employee, while other factors indicate that the worker is an independent contractor. There is no "magic" or set number of factors that "makes" the worker an employee or an independent contractor, and no one factor stands alone in making this determination. Also, factors which are relevant in one situation may not be relevant in another.

The keys are to look at the entire relationship, consider the degree or extent of the right to direct and control, and finally, to document each of the factors used in coming up with the determination.

### Form SS-8

If, after reviewing the three categories of evidence, it is still unclear whether a worker is an employee or an independent contractor, Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding (PDF) can be filed with the IRS. The form may be filed by either the business or the worker. The IRS will review the facts and circumstances and officially determine the worker's status.

Be aware that it can take at least six months to get a determination, but a business that continually hires the same types of workers to perform particular services may want to consider filing the Form SS-8.

## **Misclassification of Employees**

### **Consequences of Treating an Employee as an Independent Contractor**

If you classify an employee as an independent contractor and you have no reasonable basis for doing so, you may be held liable for employment taxes for that worker (the relief provisions, discussed below, will not apply). See Internal Revenue Code section 3509 for more information.

### **Relief Provisions**

If you have a reasonable basis for not treating a worker as an employee, you may be relieved from having to pay employment taxes for that worker. To get this relief, you must file all required federal information returns on a basis consistent with your treatment of the worker. You (or your predecessor) must not have treated any worker holding a substantially similar position as an employee for any periods beginning after 1977.

### **Misclassified Workers Can File Social Security Tax Form**

Workers who believe they have been improperly classified as independent contractors by an employer can use Form 8919, Uncollected Social Security and Medicare Tax on Wages to figure and report the employee's share of uncollected Social Security and Medicare taxes due on their compensation.

### **Voluntary Classification Settlement Program**

The Voluntary Classification Settlement Program (VCSP) is a new optional program that provides taxpayers with an opportunity to reclassify their workers as employees for future tax periods for employment tax purposes with partial relief from federal employment taxes for eligible taxpayers that agree to prospectively treat their workers (or a class or group of workers) as employees. To participate in this new voluntary program, the taxpayer must meet certain eligibility requirements, apply to participate in the VCSP by filing Form 8952, Application for Voluntary Classification Settlement Program, and enter into a closing agreement with the IRS.



# Supervision Of Other Licensees

## Liability/Responsibility for Acts of Associated Licensees

A broker's responsibility for the acts of associated/supervised licensees is noted in the license law in section 1455, #19 and 20 and Section 303 E of the Rules and Regulations:

*(19) Knowingly permitting a sponsored licensee to operate as an individual real estate broker.*

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

*Active licensed brokers who elect to sponsor an applicant for a real estate license shall be subject to the duties and penalties prescribed for sponsoring brokers in the Louisiana Real Estate License Law and commission rules and regulations and shall bear the responsibility for the license activity of any sponsored licensee, which shall also include ensuring timely license renewal prior to the practicing of real estate.*

These parts of license law mean:

1. Supervised licensees may not store funds belonging to others but must turn over any funds collected to the managing broker immediately
2. Supervised licensees may not declare contracts null and void
3. Supervised licensees may not return deposits to buyers or grant them to sellers
4. Supervised licensees may not accept listings (only managing broker may do this)
5. Supervised brokers may not cancel listings (only managing broker may do this)

Supervised licensees DO need to be taught these things, and re-taught at regular intervals.

## §1801. Broker Supervision

A. A broker must provide a sponsored licensee with written notice and acknowledgement of the activities that the broker authorizes the sponsored licensee to engage in under R.S. 37:1431(24).

B. A broker who sponsors licensees or is a qualifying broker for a corporation shall have written policies and procedures to ensure the following:

1. each sponsored licensee maintains their license in the active status at all times while they are engaging in real estate activities as described in R.S. 37:1431(24).
2. each sponsored licensee complies with the advertising and team rules;
3. a method and process for the sponsored licensee to provide documents to the broker for compliance with record keeping.

C. Listings and other agreements for real estate brokerage services must be solicited under the name of the broker corporation or supervising broker. These agreements shall be signed by the broker or by a sponsored licensee acting under written authority of the sponsoring broker.

D. A broker must maintain the rental trust account, the sales escrow account, and the security deposits trust account with appropriate controls for deposits and disbursements of funds received on behalf of consumers; and

E. When the broker is a business entity, the qualifying broker is the person responsible for the broker responsibilities under this Section.

## Broker Recordkeeping Requirements

Louisiana Revised Statutes 37:1449(D)(1) Individual real estate brokers shall retain all of the following records, readily available and properly indexed, for a period of five years:

- (a) Bank statements, copies of deposit slips, and cancelled checks on all escrow or trust accounts.
- (b) Copies of all documents that pertain in any way to real estate transactions wherein the individual real estate broker or licensees sponsored by the individual real estate broker have appeared in a licensing capacity.

§1803 of the rules and regulations discusses what are considered records:

In a format that is readily available to the commission and for a period of no less than five years a broker must maintain at minimum the following records:

1. disclosures;
2. listing agreements, buyer representation agreements, other written agreements that authorize licensees to advertise or represent property for sale or lease, other written agreements that authorize licensees to receive compensation;
3. contracts and related addenda;
4. receipts and disbursements of compensation for services as defined under R.S. 37:1431(24);
5. property management agreements;
6. appraisal, broker price opinions, and comparative market analyses;
7. sponsorship agreements and termination paperwork; and
8. independent contract agreements between brokers and sponsored salespersons.

Best Practice - If the real estate agent prefers paper files, then the real estate agent can print the text message (or e-mail) and stick the text message (or e-mail) in their paper folder; OR

If the real estate agent operates under a “paperless” system, the real estate agent can save/store/transfer every text message (or e-mail) to their cloud storage.

## Escrow and Trust Accounts

**Information regarding broker escrow accounts is found in Chapter 27 of the rules and regulations. §2701. Resident Broker Requirements**

A. A resident broker, including corporations, partnerships and limited liability companies, who accepts any funds on behalf of clients in a real estate sales transaction shall open and maintain a sales escrow checking account in a financial institution in the state of Louisiana. All sales escrow accounts shall be titled in the identical wording as stated on the broker's license and the wording "Sales Escrow Account" shall be imprinted on all checks and bank statements issued in connection with this account. Except as otherwise provided in this Chapter, all funds received by a broker in connection with the sale of real estate shall be deposited in this account when there is a written contract to buy and sell real estate that has been fully executed and accepted by both buyer and seller.

B. A resident broker, including corporations, partnerships and limited liability companies, engaged in the management of property owned by other persons shall open and maintain a rental trust checking account in a financial institution in the state of Louisiana. All rental trust accounts shall be titled in the identical wording as stated on the broker's license and the wording "Rental Trust Account" shall be imprinted on all checks and bank statements issued in connection with this account. Except as otherwise provided in this Chapter, all funds collected as rental payments from or on behalf of clients in connection with the management of properties owned by other persons shall be deposited into this account.

C. A resident broker, including corporations, partnerships and limited liability companies, engaged in the collection of rental security or damage deposits in connection with property management activities on behalf of clients shall open a security deposit trust checking account in a financial institution in the state of Louisiana. All security deposit trust accounts shall be titled in the identical wording as stated on the broker's license and the wording "Security Deposit Trust Account" shall be imprinted on all checks and bank statements issued in connection with this account. Except as otherwise provided in this Chapter, all funds collected as rental security or damage deposits from or on behalf of clients shall be deposited into this account.

## Brokers' responsibility to train supervised licensees

Brokers' responsibility to train supervised licensees as stated in Section 303E of the rules and regulations encompasses all acts associated with the brokerage of real estate. Brokers are busy; some fulfil this obligation by assigning or outsourcing the training function while others do it themselves.

Even those who outsource should keep one thing in mind: re-training is essential and should be done often. Education research has found that it takes 5-12 repetitions of the same lesson

to change students' behaviors. For this reason, it is fundamental to licensee training to offer "scripts" for handling agency acts. The very last thing a broker wants is supervised licensees making it up as they go along. If the broker was once this type of supervised licensee, the potential problems are well known.

## **Unlicensed secretaries and assistants**

Unlicensed secretaries and assistants CAN:

1. Answer the phone and forward calls to licensee
2. Submit listings and changes to a multiple listing service
3. Follow up on loan commitments after a contract has been negotiated
4. Place signs on listed property
5. Order items of routine repair as directed by licensee
6. Prepare flyers and promotional information for approval by Licensee and supervising broker
7. Type contract forms as directed by Licensee and supervising broker
8. Act as courier service to deliver documents, pick up keys, etc.
9. Schedule appointments for Licensee to show listed property
10. Secure public information documents from courthouse, sewer district, water district, etc.
11. Have keys made for company listings
12. Write ads as directed by Licensee and supervising Broker and place advertising (promotional information, newspaper ads, etc.)

Unlicensed secretaries and assistants CAN NOT:

1. Host an open house
2. Prepare promotional material or ads without the review and approval of Licensee and supervising broker
3. Show property listed for sale
4. Answer any questions on listing
5. Discuss or explain a contract, listing, or other real estate document with anyone outside the firm
6. Be paid on the basis of real estate activity, such as a percentage of commission, or any amount based on listings, sales, etc.
7. Negotiate or agree to any commission, commission split, management fee or referral fee on behalf of a licensee

## Independent contractors vs. employees and the use of independent contractor agreements

A real estate salesperson or associate broker shall be an independent contractor of the broker with whom he is affiliated for all purposes and shall not be an employee of the broker if all of the following conditions are met:

- (1) ) The real estate salesperson or associate broker is a licensee.
- (2) Substantially, all of the real estate salesperson's or associate broker's remuneration for the services performed are directly related to sales or other output rather than the number of hours worked.
- (3) There is a written agreement between the real estate salesperson or associate broker and the broker that specifies that the real estate salesperson or associate broker will not be treated as an employee.

## Teams

**Real Estate Teams and Groups** - For the purpose of this Chapter, team or group shall mean a collective name used by two or more real estate licensees, who represent themselves to the public as a part of one entity that performs real estate license activities under the supervision of the same sponsoring broker.

**Sponsorship** - Team or group members shall be sponsored by the same broker and, if applicable, shall conduct all real estate license activity from the office or branch office where their individual license is held.

Licensees shall not form a team or group without written approval from the sponsoring broker.

The sponsoring broker shall designate a member of each approved team or group as the contact member responsible for all communications between the broker and the team.

**Team or Group Names** - Team or group names shall not contain terms that could lead the public to believe that the team or group is offering real estate brokerage services independent of the sponsoring broker. These terms shall include, but are not limited to:

- real estate;
- brokerage or real estate brokerage;
- realty;
- company.

**Team or Group Leaders** - The sponsoring broker shall be responsible for all license activity of team or group members sponsored by the broker.

The designated contact member of each team or group shall maintain a current list of all team or group members, which shall be provided to the sponsoring broker upon formation of the team or group and immediately upon any change thereafter.

A current record of all team or group names, and the members thereof, shall be maintained by the sponsoring broker in a manner that can be made readily available to the LREC upon request, including record inspections.

**Team Advertising** - A team or group name shall not be used in advertising without the written approval of the sponsoring broker.

The term "team" or "group" may be used to advertise real estate license activities provided that:

1. the use of the term does not constitute the unlawful use of a trade name and is not deceptively similar to a name under which any other person or entity is lawfully doing business;
2. the team or group is composed of more than one licensee;
3. the advertising complies with all other applicable provisions of this Chapter and LAC 46:LXVII. Chapter 25 of these rules and regulations.

An unlicensed person shall not be named, acknowledged, referred to, or otherwise included in any team or group advertising.

**Disputes** - The commission shall not intervene or become otherwise involved in team or group disputes, including those pertaining to financial obligations that are the result of a business relationship between a team or group, team or group member, branch manager, sponsoring broker, or any combination thereof, including the payment of commissions and dues to professional organizations. Such disputes shall be settled by the respective parties or by a court of competent jurisdiction.

# PART THREE: USE OF TECHNOLOGY

## Electronic Signatures

### Delivery of Documents Electronic Signatures

The commission has stated its rules for timely presentation of offers and counteroffers as below:

- Timely Presentation of Offers and Counter Offers
- All written offers and counter offers for the purchase of real estate shall be presented to all buyers and/or sellers for their consideration and decision immediately, without delay.
- The licensee who prepares an offer or counter offer in a real estate transaction shall ensure that the time of day and date the offer or counter offer was signed by the offering party are included in the document.
- The licensee who presents an offer or counter offer in a real estate transaction shall ensure that the time of day and date the offer or counter offer was accepted, rejected or countered are included in the document.

As is obvious, there is absolutely no provision for “licensee was too tired,” “licensee was too busy,” licensee will get to it as soon as possible.” Brokers should emphasize to supervised licensees that they are responsible for promptly delivering any offers or counteroffers into the hands (virtual or actual) of the appropriate recipient immediately.

In this time of instant electronic transfers, there is no defensible excuse for failure to deliver documents according to the regulation stated above. When a supervised licensee fails to do so, the commission may come calling on the licensee and the broker.

## Document Delivery And Annotation

Electronic transfer of legal documents immediately brings up the question of electronic signatures. This is a question that was addressed online by the Louisiana Realtors Association and is quoted below:

A facsimile signature falls within the definition of electronic signature under the Electronic Signatures In Global and National Commerce Act (the "Act"). The Act went into effect June 30,

2000 and prohibits any rule of law from denying the legal effect of a document signed or affirmed electronic signature just because the document will not also be signed or affirmed by a manual signature.

However, the Act, while encouraging the use of electronic signatures, does not require a person to use or accept electronic signatures. Therefore, if the parties do not want an electronic or facsimile signature to be treated as an original signature they may so provide in the applicable contract or agreement itself.

...unless the parties otherwise agree in writing, e-signatures or fax signatures will be considered contractually binding not only between the parties, but also as to third parties. As long as you do not opt out of the default provisions of electronic signature law, it is not necessary to obtain manual signatures because the electronic signatures are given full recognition under the law because the Act prohibits otherwise.

**Electronic Notice Authorization**

The BUYER further authorizes his or her agent to electronically deliver notices and other communications to the email address he or she provided to his or her agent. Furthermore, the BUYER authorizes the Seller's agent to electronically deliver notices and communications to the Buyer's agent at the email address shown above.

The SELLER further authorizes his or her agent to electronically deliver notices and other communications to the email address he or she provide to his or her agent. Furthermore, the SELLER authorizes the Buyer's agent to electronically deliver notices and communications to the Seller's agent at the email address shown above.

The authorization contained in this Section is not an authorization for the Buyer's agent to communicate directly with the SELLER or a Seller's agent to communicate directly with the BUYER.

The BUYER and SELLER agree the use of electronic documents and digital signatures is acceptable and will be treated as originals of the signatures and documents transmitted in this real estate transaction. Specifically, the BUYER and SELLER consent to the use of electronic documents, the electronic transmission of documents, and the use of electronic signatures pertaining to this Agreement, and any supplement addendum or modification relating thereto, including but not limited to any notices, requests, claims, demands and other communications as set forth in the Agreement.

381  
382 **ACCEPTANCE:** Acceptance of this Agreement must be in writing. This agreement may be executed by use of electronic signatures, in  
383 accordance with the Louisiana Uniform Electronic Transaction Act. The original of this Agreement shall be delivered to the listing Broker's firm.  
384 This Agreement and any supplement addendum or modification relating hereto, including any photocopy, facsimile or electronic transmission  
385 thereof, may be executed in two or more counterparts, all of which shall constitute one and the same Agreement  
386  
387 **NOTICES AND OTHER COMMUNICATIONS:** All notices, requests, claims, demands, and other communications related to or required by this  
388 Agreement shall be in writing. Notices permitted or required to be given (excluding service of process) shall be deemed sufficient if delivered  
389 by (a) mail, (b) hand delivery; (c) overnight delivery; (d) facsimile, (e) email, or (f) other e-signature transmissions addressed to the respective  
390 addresses of the parties as written on the first page of this Agreement or at such other addresses as the respective parties may designate by  
391 written notice.



Use of electronic transfers can be a mixed blessing for brokers. On one hand, it is such a low energy task that even the most exhausted licensee can click the end button. On the other hand, documents transferred electronically will automatically be date and time stamped, eliminating the “I did it much earlier than everyone else says” defense.

Brokers should strive to point this out to all supervised licensees.

## Advertising

### Advertising and the Brokerage

**All advertising** for property listed by or services performed by a licensed individual real estate broker or a licensed corporation, limited liability company, or partnership, and any advertising for property listed by or services performed by a licensed individual real estate broker or a licensed corporation, limited liability company, or partnership by sponsored licensees or employees, **shall be under the direct supervision of and approved by the licensed individual real estate broker** or designated qualifying broker of the licensed corporation, limited liability company, or partnership.

**Discussion:** Louisiana Real Estate Commission Staff Policy - Each licensee is responsible for compliance. The fine for a first offense is \$250, second offense is \$500, and for a third offense \$1,500. The Louisiana Real Estate Commission will verify that the qualifying broker has procedures in place to supervise and approve agents’ advertisements.

Real estate advertising typically falls into one of two main categories.

The first category includes advertising the services offered by the licensee. The purpose is to draw the attention of potential clients to these services and not to a specific property for sale or lease. Examples of this type of advertising are those television or radio ads extolling the merits of a licensee or a brokerage.

The second category concerns brokerage transactions and includes advertising real estate. This type of advertising is done in newspapers and trade publications, on specialized television networks, on listing-cut sheets, and on the Web. The purpose is to advertise one or more properties for sale or lease.

To advertise brokerage transactions, the Louisiana Rules and Regulations require brokers and salespeople to have the seller’s or lessor’s written permission to advertise the property. In practice, this means that a licensee can advertise a property for sale or lease only if they have a brokerage contract authorizing them to do so.

Caution must be used when a listing brokerage authorizes another brokerage or salesperson to advertise a property. If you want to advertise another brokerage's listing, you must obtain the permission of the owner and the listing broker.

One way to ensure whose listings are whose is to create two links for listings, one titled "My Listings" and one titled "Other listings" with each link taking you to a separate and correspondingly titled web page.

When advertising completed transactions make sure your information is not misleading or false in nature.

**Keep Information on Web Sites Current.** Make sure not only your name and number, but your broker's name and number, are on all forms of communication and on every webpage.

Brokers must take all reasonable means to make sure that the licensees they sponsor comply with the provisions of the Louisiana Real Estate License Law and Commission Rules and Regulations. Brokers must therefore ensure that their own advertising, and any advertising done on their behalf by their salespeople, is consistent with the rules.

### **Misrepresentation**

Giving false information about a property, whether intentionally or unintentionally is misrepresentation. If damages result from any type of misrepresentation, the agent may be held liable. **Fraud** is the *intentional* misrepresentation of a material fact. Fraud includes making false statements and withholding pertinent information.

**Negligent misrepresentation** occurs when the agent should have known that a statement about a material fact was false. Ignorance is no excuse. **Negligent omission** occurs when the agent accidentally fails to perform some act, such as delivering a counteroffer. **Puffing** is exaggerating a property's benefits such as views or landscaping. Puffing is always an opinion. An example of puffing would be the statement, *"This is the most beautiful house in the city!"*

**Fraud:** Fraud is the deliberate or intentional misrepresentation of pertinent facts which allow one party to gain undue advantage over another party.

- **actual fraud:** Actual fraud is committed when there is intent to deceive, for example, lying or withholding pertinent information.
- **constructive fraud:** Constructive fraud is committed with no intent to harm, mislead or misrepresent. Examples would be breach of trust, responsibility, or duty.

**Mistakes:** Mistakes in the preparation or interpretation of a contract may also remove genuine assent. There are two types:

- **mistakes-of-fact:** These are errors regarding the facts of a contract, for example, a misunderstanding as to the location of a parcel of land being conveyed.
- **mistakes-of-law:** These occur when a party, in full knowledge of the facts, comes to an erroneous conclusion as to their legal ramifications.

Mistakes that are legitimate human errors may also make a contract voidable. However, if the mistake is the result of one party's negligence or carelessness, it is not sufficient grounds for contractual release. Mistakes must be mutual if the contract is to be voidable. A mistake by one party does not invalidate a contract.

**Undue Influence:** Undue influence is the use of one's power or authority to force another person to enter into an agreement against his will.

**Duress:** Duress is unlawful influence exerted upon a person to force him to act against his own will. Duress includes physical force, property damage and confinement.

**Menace:** Menace is the actual threat to commit duress.

### **Social Media**

The emergence of social networking as it is known today began in the early part of this century. Social media has become a powerful and popular way to advertise. It can be an effective way to generate business, but while results are often immediate, it requires constant maintenance and participation. It is important to remember that advertising laws and regulations apply to social media advertising as well as to other more traditional forms.

#### **Things We Know About Social Media:**

- A survey by the National Association of Realtors indicates that 90% of consumers use the web at some point to complete a transaction
- First contact is now often online
- Your organization's reputation is being shaped online
- There has been a significant increase in marketing through social media
- Social Media is here to stay

### **The Louisiana Real Estate Commission's Advertising Guidelines Checklist**

**Disclaimer:** These guidelines were established to provide a framework for licensees and assist them in determining the appropriate methods for advertising. They were written to give guidance on acceptable practices for advertising in the real estate industry that are in conformity with the law and rules and regulations.

**Broker Responsibility:** Brokers must take all reasonable means to make sure that the licensees they sponsor comply with the provisions of the Louisiana Real Estate License Law and Commission Rules and Regulations. Brokers must therefore ensure that their own advertising, and any advertising done on their behalf by their sponsored licensees, is consistent with the rules.

**Basic Rules:** A checklist is provided below to assist in ensuring YOUR advertising practices are in line with the rules and recommendations of the Louisiana Real Estate Commission. Please visit our website to answer any further questions.

### **Disclosures & Representations**

- Advertisements contain the sponsoring or qualifying broker's name and telephone number.
- Advertisements contain the identical name of the licensed individual or entity, as registered with the Commission.
- Advertisements are supervised and approved by the sponsoring broker or qualifying broker.

### **Owner Authorization**

- Written authorizations have been obtained from all owners of a property for all advertisements of property for sale or lease.
- Advertisements for undivided real estate clearly state that the property advertised is undivided.
- Advertisements for options on real estate clearly state that it is an option being advertised and not the property itself.

### **Agent/Owner-Licensed Agent**

- Advertisements for the sale or lease of a property by a licensee who owns any interest in the property includes the disclosure that the owner has a real estate license.
- Advertisements or offers to purchase or rent property for a licensee's full or partial interest state in the advertisement that he or she is a licensed real estate agent.

### **Accuracy**

- Advertisements are accurate and do not misrepresent any property, terms, values, policies or services of the business conducted.
- Advertisements do not include any name or trade name of any organization or association of which the licensee advertising is not a member.

### **Residential Property**

Advertisements indicate the month and year the advertisement is printed, published or distributed, or is contained in a publication with such information printed on it.

### **Franchise Organizations**

Advertisements clearly state that the brokerage firm is independently owned and operated and contain the full name as registered with the Commission.

## Internet Advertising

Advertising or marketing on a site on the Internet must include the following data on each page of the site on which the advertisement appears:

1. Licensee's name as registered with the Commission
2. Sponsoring or qualifying broker's name or trade name as registered with the Commission
3. City and state of the sponsoring or qualifying broker's main office or branch office
4. Phone number of the sponsoring or qualifying broker.

Any electronic communication used for advertising or marketing, including but not limited to, e-mail, e-mail discussion groups, bulletin boards, and social media must include the following data on the first or last page of all communications:

1. Licensee's name as registered with the Commission
2. Sponsoring or qualifying broker's name or trade name as registered with the Commission
3. City and state of the sponsoring or qualifying broker's main office or branch office
4. Phone number of the sponsoring or qualifying broker.

## Group or Team Advertising

- Advertisements contain the sponsoring or qualifying broker's full name or trade name as registered with the Commission.
- Advertisements contain the sponsoring or qualifying broker's telephone number.
- Advertisements use only team names approved by the sponsoring or qualifying broker.
- Advertisements list the full name of each team member as registered with the Commission and only represent members who are licensed by the sponsoring or qualifying broker.
- Advertisements cannot be construed as that of a company name.

## Promotions & Incentives

Advertisements do not offer any rebates to clients as the law prohibits this practice.

## Data Exchange (MLS)

An MLS-only package, which allows sellers to offer their property for sale in MLS without signing an exclusive right to sell contract with the REALTOR® member of MLS.

- Usually there is a flat fee for this service
- There may be a separate compensation offered to a cooperative agent.
- The flat fee to the listing broker is usually not refundable if the property does not sell.
- A seller who finds a buyer without the help of a cooperative broker, however, would not pay this compensation.

An MLS inclusive service may also include other services, such as advertising on the broker's website, or other websites, such as REALTOR.com, that are available to the broker. In some cases, other REALTOR'S® websites may be available to the MLS inclusive seller.

MLS-only and MLS inclusive packages offered by fee-for-service brokers typically include other services and selling aids, such as yard signs, online advertisements, and a lock-box to allow buyers' agents to show the home when the seller is not present.

In addition to the MLS packages, many fee-for-service brokers offer other services. Most offer at least two tiers of service and the complete array of traditional services at a reduced commission. Thus, consumers who purchase the MLS-only package, but later feel they need more assistance with their transaction, typically can obtain it from their broker for an additional fee.

Further, many fee-for-service brokers allow their clients to cancel their listing agreement at any time, leaving consumers free to pursue other brokerage or non-brokerage options if they become dissatisfied with the broker's service.

Brokers have been using various versions of the limited service business plan since the 1970s. Some have been very successful, others have not.

## Cybersecurity Brokerage Risks

Confidentiality is a bedrock principle of ethical real estate practice and agency law. Real estate professionals are in a unique position to know many details of their clients' financial and family matters. When home buyers and sellers do business with real estate professionals they trust that the information they share will be kept confidential.

As a real estate professional, you know that trust is at the heart of your relationship with your clients. You invest time, resources, and self-esteem in nurturing your professional reputation and protecting client confidentiality is essential to maintaining it. But if that trust is broken, can it ever be fully restored? What is the cost in lost business and referrals? Picture the harm to your business if someone steals confidential client information and uses it for fraudulent, criminal purposes?

You can see if someone pries open the locks of file cabinets or steals your wallet. What if the break-in is into your virtual file cabinets or wallet, or those of your clients? How long would it go unnoticed? How much harm could be done in the meantime? What could you do to ensure the protection of the important personal information clients entrust to your business?

Data breaches are all around us. The Breach Level Index, a website that gathers information on reported data breach, estimates the number of data records lost or stolen worldwide as:

☐ 5.1 million per day ☐ 214,800 per hour ☐ 3,500 per minute ☐ 60 per second.

In our intensely interconnected world of communications, finances, and ecommerce, every day activities have the potential to expose personal information. Some of the largest U.S. data breaches of recent years involve household-name companies and eye-popping numbers of exposed records.

What do these data breaches have in common? All of targets are large top-rated companies with full-time dedicated IT departments on constant lookout for data breaches. The data breaches were the result of malicious intrusion. Millions of customer records were compromised.

Whether you realize it or not, most real estate businesses, associations, multiple listing services, and real estate companies keep sensitive, personal information in their files. Associations may collect members' credit card or bank account information for dues billing, products and services purchases, education course enrollment, RPAC contributions, special event tickets, and so forth. As employers, both real estate companies and associations maintain a lot of information about employees including Social Security numbers, bank accounts, tax information, full names and addresses, birthdays, pension fund investments, health insurance information, and more.

A good way to get a handle on your real estate business information sources and storage points is to think of the flow of data in terms of spheres—like the spheres-of-influence concept that is basic to real estate practice. Here's an example.

What do consumers Think About Data Security? Protecting personal information has become a top concern for consumers worldwide. Consumers expect businesses to safeguard the information they share, but few have confidence in the ability of businesses to keep their information private.

Look at these results from recent consumer surveys.

- 1 in 4: the percentage of consumers who feel that most companies handle their sensitive personal data responsibly.
- 87 percent: the percentage who say they will take their business elsewhere if they don't trust a business to keep personal information secure.
- 85 percent: the percentage of consumer who say the extent of their willingness to share information depends on how much they trust the business.
- 8 in 10: the percentage of consumers who feel that they have lost control of how their personal information is being shared.

“Consumers already demonstrate they can be unforgiving with businesses who neglect their data...and efforts to mitigate their own risk often translate to cautionary or even punitive actions and behaviors, such as decreasing online and offline engagement with brands they perceive to be a risk.”

**Phishing Attacks** A phishing attack deceives the victim into doing one of two actions: revealing confidential information or downloading self-installing malware. Phishing scams show up as spoofed websites or phony emails, texts (smishing), or tweets with links or attachments. There is even a variation for phones known as vishing.

Spear phishing involves targeting a specific victim, such as an accountant or personnel employee. The scammer, posing as a manager or senior executive, sends a personalized, urgent email to the targeted victim requesting confidential information. Names, titles, and contact information of company executives can be easily gleaned from company “who we are” web pages.

Whale phishing is similar to spear fishing. It targets “big-fish” victims in upper levels of a company.

Angler phishing targets social media users, particularly Twitter, and starts with complaints or comments to company customer service departments. Scammers, posing as customer service reps, intercept the communication and redirect the victim to a fake customer service website. Thinking the exchange is with a legitimate customer service department, the victim is tricked into revealing personal information.

Typo squatters rely on mistyped URLs or titles of websites. A common misspelling—off by a letter or two—takes the victim to a spoofed website that looks just like the intended one.

**Business Email Compromise** A business email compromise (BEC) combines phishing with wire transfer fraud. When real estate transactions are involved, the financial consequences can be devastating for clients and companies. BEC scammers start by researching company executives and staff. They gather information on reporting lines as well as exact names and job titles so that specific staff members can be targeted. The usual targets are senior staff in finance or accounting departments or a trusted service provider.

The scam starts with an urgent email impersonating the real estate professional or some other person involved in the transaction. The target could easily be the buyer in a real estate transaction with the fraudulent email sent over a broker’s signature. The email could also impersonate a contractor completing a build, an attorney, or an escrow agent. The email appears legitimate and instructs the recipient to quickly wire funds to the scammer’s account in order to secure the transaction. The email may carry the “sent from my phone” tag line which is meant to heighten the sense of urgency as well as excuse misspellings, grammatical mistakes, and lack of a company email signature.

When the victim initiates the requested wire transfer, the funds are lost. In most cases, by the time the fraud is discovered, the scammers have withdrawn the wired funds and closed the account.

Ransomware is a type of malware that prevents users from accessing their system or personal files and demands ransom payment in order to regain access.



**Weak Passwords** A strong password is the first line of defense against hackers. It's just common sense, yet weak passwords offer an almost open door for hackers. Weak passwords are easily guessed or decoded. Weak passwords include:

- Names (family members, friends, your own name, common names)
- Significant dates (birthdays, graduation years, phone numbers)
- Dictionary words
- Keyboard patterns and swipes (1234567, QWERTY)
- Repetition of a user name or log-in code
- Repeating previously used passwords
- Use of the same password for multiple devices
- Use of default settings (password, changethepassword)

Characteristics of strong passwords include at least six or more characters that combine letters, numbers, and symbols and are case sensitive with upper- and lower-case letters.

The method for remembering and storing passwords is as important as creating strong password. Do you have a list of passwords written down on a piece of paper and stored in your desk? If you answered yes, you are among the almost half (49%) of Americans who use this method to remember passwords.<sup>11</sup>

**Best Practice:** Have a plan of who to call and what to do should you get hacked. Talk to your IT personnel and let them know of the risks you are concerned with.

## **My LREC Portal**

### **Accessing the MyLREC Portal:**

Visit [lrec.gov](http://lrec.gov) and select MyLREC Portal from the site header.

Licensees will need an LREC-provided User ID (this cannot be changed by the user or the LREC) and a password that is provided by the LREC, but can be changed by the user.

If a user does not remember the password to their account, they can reset it on the MyLREC Portal sign in page using the Reset Password Link

- Licensees can reset their password using their User ID and their birth date **or** last four digits of their SSN.
- Companies can reset their passwords using their User ID and last four digits of their company's FEIN number

If a user does not remember their User ID, they can have it sent to the email on file by using the Forgot User ID link on the MyLREC Portal sign in page.

- Licensees can look up their User ID using the email address they have on file with the Commission and their birth date **or** last four digits of their SSN.
- Companies can look up their User ID using the email address they have on file with the Commission and last four digits of their company's FEIN number
  - If the email address used to retrieve a User ID does not match the one on file with the Commission, the user will have to complete and submit a Change of Address form to update the email address and then try the steps above again.

## **MyLREC Portal Tools**

Users can complete many tasks in the MyLREC Portal, including:

- Updating Contact Information
- Viewing their Education Transcript
- Viewing their Fee History
- Viewing their E&O Insurance Coverage Information
- License Renewal
- Completing the Transfer/Terminate process to change Brokers
- New Licensees can track the progress of their application
- Print a copy of their license
- Brokers can view a list of their supervised licensees, including their license status, education transcript, and printable license. They can also terminate supervision of individual agents using their Portal.
- Pay Compliance Fees

The LREC is developing more tools for the MyLREC Portal, including:

- Digitizing forms to make license maintenance easier
- Tools to allow a broker to upgrade/downgrade license type (associate vs. individual)
- Allowing online payments for more processes/outstanding balances

## **ADA Compliance & Disclosure - Websites**

### **What Is ADA Compliance?**

The Americans with Disabilities Act (also known as ADA) is a comprehensive civil rights law that was enacted to protect individuals with disabilities from discrimination.

The law has a wide scope. It applies to:

- State and local government.
- Public and private spaces.
- Employment.
- Building codes.
- Transportation.
- Telecommunication.

The ADA is the reason we have things like disabled parking requirements, service counter height requirements, and wheelchair ramp mandates in building codes.

Title III of the ADA mandates that all “places of public accommodation” (all business open to the public) are legally required to remove any “access barriers” that would hinder a disabled person’s access to that business’s goods or services.

When the ADA was enacted in 1990 (while the internet was still in its infancy), “access barriers” was widely understood to mean literal barriers, like stairs that would hinder a customer in a wheelchair from accessing a business, for example. Then in 2010, the US Department of Justice issued an Advanced Notice of Proposed Rulemaking indicating that they intended to amend the language in Title III of the ADA to ensure it would also apply to website accessibility.

The announcement stated the DOJ’s intention to:

*“Establish requirements for making the goods, services, facilities, privileges, accommodations, or advantages offered by public accommodations via the Internet, specifically at sites on the World Wide Web (Web), accessible to individuals with disabilities.”*

Since 2010, various courts have heard parts of the DOJ’s argument. The results have been mixed.

Some courts have ruled that only websites with goods or services tied to a physical location, like a retailer that also sells its products in an online store, are considered “places of public accommodation” and would, therefore, be covered by the ADA.

However, other courts have more broadly argued that any website offering goods or services online should be considered “places of public accommodation”, even if they don’t have a physical store presence.

A final ruling is expected to be announced sometime in 2018. This will set the official standard for website accessibility for businesses.

This set of guidelines will outline precisely which websites will be eligible, and what those website owners will need to do in order to be ADA compliant.

### **W3C Web Content Accessibility Guidelines**

In an August 2016 case involving the University of California Berkeley, the DOJ ruled that the public university was in violation of ADA Title II (similar to Title III but it instead applies to government organizations) because their YouTube channel’s videos didn’t include captions for hearing impaired visitors. The DOJ found this to violate the ADA as deaf users did not have equal access to the online content.

So where did the DOJ point UC Berkeley for guidance? The World Wide Web Consortium's (W3C) Web Content Accessibility Guidelines (WCAG 2.0 AA). The Department of Justice ruled that UC Berkeley should use the WCAG as their guidelines for accessibility, leading many to believe that the upcoming 2018 ruling may use the same set of standards as the benchmark

### **What Is WCAG?**

The WCAG is a set of accessibility standards created by the World Wide Web Consortium in partnership with various other groups to help guide web content producers in making their work more accessible to all, including users with disabilities.

WCAG 2.0 is the technical standard featuring 12 guidelines under four categories:

- Perceivable.
- Operable.
- Understandable.
- Robust.

Each of the 12 guidelines contains testable "success criteria" which can be used to measure the usability of your website.

## **PART FOUR: LEGAL AND ADMINISTRATIVE RULES COMPLIANCE**

### **Licensing Maintenance**

**Address Changes** - Reporting Change of Address and/or Telephone Number. The commission shall be notified in writing within 10 days of any change in the mailing address, physical address, and/or telephone number of a licensee's, certificate holder's, or registrant's business or residence. Updates to contact information can be made in the My LREC Portal

**Name Change** - Complete the name change Affidavit found on MyLREC.

### **License Renewal**

#### **Active Licenses**

Each license, certificate, or registration issued shall be issued for a period of one year and shall expire on December thirty-first following the date upon which it is issued. Each license, certificate, or registration shall be renewed annually. Conducting any activity authorized by the license, certificate, or registration after the expiration of the license, certificate, or registration shall be deemed a violation. Licenses, certificates, or registrations not renewed by January first shall be considered expired.

#### **Inactive Licenses**

During the period the license is in the inactive status, the licensee shall be prohibited from engaging in any activity requiring a real estate license. The licensee shall be required to renew the inactive license on an annual basis by filing the required renewal application and paying the inactive renewal fee.

### **License Reinstatement and Late Renewal**

Each license, certificate, or registration shall be issued for a period of one year and shall expire on December thirty-first following the date upon which it is issued. Each license, certificate, or registration shall be renewed annually. Conducting any activity authorized by the license, certificate, or registration after the expiration of the license, certificate, or registration shall be deemed a violation of the Rules and Regulations. Licenses, certificates, or registrations not renewed by January first shall be considered expired.

**Licenses shall be renewed on or before September 30 annually or the renewal is considered delinquent.**

### **Delinquent Renewal**

Delinquent renewals must include the renewal application, renewal fees and delinquent fees.

Delinquent fees, in addition to the renewal fee, if not renewed by September 30th of the applicable license or registration period:

- October 1 – November 15 Active and Inactive Licensees \$50.00
- November 16 – December 31 Active Licensees \$200.00
- November 16 – December 31 Inactive Licensees \$50.00
- October 1 – December 31 Real estate schools, vendors, and pre-license instructors \$50.00

### **Failing to renew by December 31.**

A licensee or registrant who fails to delinquent renew a license or registration by December thirty-first forfeits his renewal rights, and the former licensee or registrant shall be required to apply as an initial applicant and meet all requirements of an initial applicant. The former licensee or registrant does not have to complete the ninety hours of real estate coursework; however, the former licensee must provide proof of completion of the ninety hours and they must pass the state and national exams.

### **License Transfers**

A request to terminate sponsorship of a licensee or to transfer a licensee to a new broker shall be submitted on forms prescribed by the commission and shall be accompanied by the fees prescribed in R.S. 37:1443.

LREC has instituted a new online termination & transfer feature found through the MyLREC portal.

### **Fee Exemptions**

A request for license transfer that is submitted within 60 days of any of the following circumstances shall be exempt from the transfer fee or delinquent renewal fee prescribed in R.S. 37:1443:

- the sponsoring broker has died;
- the sponsoring broker has failed to renew his license;
- the license of the sponsoring broker has been suspended or revoked;
- the license of the sponsoring broker has been transferred to the inactive status;
- the sponsoring broker elects to discontinue the sponsorship of a licensee.

**IMPORTANT:** Rule Interpretation - If new licensees do not take post licensing in the initial licensing year, they must take all 12 hours to renew – not just the mandatory.

### **Activities requiring a license**

“Real estate activity” means any activity relating to any portion of a real estate transaction performed for another by any person, partnership, limited liability company, association, or corporation, foreign or domestic, whether pursuant to a power of attorney or otherwise, who for a fee, commission, or other valuable consideration or with the intention, in the expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration:

- Sells, exchanges, purchases, manages, rents, or leases or negotiates the sale, exchange, purchase, rental, or leasing of real estate.
- Offers or attempts or agrees to negotiate the sale, exchange, purchase, management, rental, or leasing of real estate.
- Lists or offers or attempts or agrees to list for sale or lease any real estate or the improvement thereon.
- Buys or offers to buy, sells, or offers to sell, or otherwise deals in options on real estate or the improvements thereon.
- Advertises or holds himself, itself, or themselves out as engaged in the business of selling, exchanging, purchasing, managing, renting, or leasing real estate.
- Assists or directs in the procuring of prospects or the negotiation or closing of any transaction, other than mortgage financing, which results or is calculated to result in the sale, exchange, managing, leasing, or renting of any real estate, other than a provider of information, ideas, and materials to guide homeowners in the sale of their own property.
- Is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby he undertakes primarily to promote the sale, exchange, purchase, rental, or leasing of real estate through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both.
- Sells or attempts to sell or offers or attempts to negotiate the sale of any business whose assets include real estate or leases of real estate.
- Lists or offers or attempts or agrees to list for sale any business whose assets include real estate or leases of real estate.

### **Violations – 36 Ways to Lose Your License**

The commission may censure a licensee, registrant, or certificate holder or conditionally or unconditionally suspend or revoke any license, registration, or certificate issued, levy fines or impose civil penalties not to exceed five thousand dollars, or impose continuing education requirements on licensees, registrants, or certificate holders 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 any of the following acts:

- Committing any act in violation of the Louisiana Real Estate License Law not specified in this Section.
- Violating any rule or regulation promulgated by the commission in the interest of the public and consistent with the provisions of this Chapter.
- Committing any act in violation of the Louisiana Timesharing Act.
- Failure to account for any money coming into his possession belonging to others.
- Failure to properly disburse money which belongs to others upon its coming into his possession.
- Commingling the money or other property of his principals with his own.
- Accepting, giving, or charging any undisclosed commission, rebate, or direct profit on expenditures made for a principal.
- 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.
- 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.
- Guaranteeing or authorizing any person to guarantee future profits which may result from the resale of real property.
- Offering real estate for sale or lease without the written consent of the owner or his 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.
- Offering real estate for sale or lease on terms other than those authorized by the owner or his authorized agent.
- 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.
- 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.



- Knowingly making any false representations to any party in a real estate transaction.
- Acting for more than one party in a real estate transaction without the written acknowledgment of all parties to the transaction.
- 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.
- 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.
- Knowingly permitting a sponsored licensee to operate as an individual real estate broker.
- Knowingly permitting a sponsored licensee or an employee to conduct real estate activities in violation of this Chapter.
- 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.
- 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.
- 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.
- 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.
- 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.
- Failure to reduce a bona fide offer to writing when a proposed purchaser requests that a written offer be submitted.
- 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.
- 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.
- Having been convicted of a felony or entered a plea of guilty or nolo contendere to a felony charge.

- Refusing to appear or testify under oath at any hearing held by the commission.
- Procuring a license, registration, or certificate for himself or anyone else by fraud, misrepresentation, or deceit.
- Failure to comply with an order or consent order issued or approved by the commission pursuant to adjudicatory proceedings.
- 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.
- 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.
- Using advertising that is misleading or inaccurate.
- Engaging in any effort, including referral or recommendation of a specific home inspector, with the intent to deceive or defraud.

## **Disciplinary Measures & Penalties**

### **Censure**

The commission may censure a licensee, registrant, or certificate holder or conditionally or unconditionally suspend or revoke any license, registration, or certificate issued under the law, levy fines or impose civil penalties not to exceed five thousand dollars, or impose continuing education requirements on licensees, registrants, or certificate holders 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 any of the following acts

### **Fine**

The commission may censure a licensee, registrant, or certificate holder or conditionally or unconditionally suspend or revoke any license, registration, or certificate, levy fines or impose civil penalties not to exceed five thousand dollars, or impose continuing education requirements on licensees, registrants, or certificate holder.

In addition, the civil penalty for practicing without a license is \$2,000, 5 years in prison or both.

Fine for failure to take the correct continuing education - \$275

### **Suspension**

The revocation or suspension of a broker's license shall automatically suspend the license of every associate broker or salesperson who is sponsored by the broker whose license was suspended or revoked. The sponsoring broker shall, within seventy-two hours of notification by the commission of the final action on the revocation or suspension of his license, return to the commission all licenses of the licensees sponsored by him.

## **Continuing Education**

Each licensee shall complete 12 hours of approved course work prior to license renewal.

All licensees renewing in the active status shall complete the 12-hour continuing education requirement, including mandatory course hours, on or before December 31. You may renew your license prior to completing the education requirement. However, failure to complete your required education by December 31 will be considered a violation of LREC law and rules, and you will be subject to the annual continuing education audit and a possible fine.

A minimum of four of the required annual continuing education hours shall be in subjects specified by the commission.

All initial licensees shall complete 45 post-license hours within 180 days of the initial license date. Post-license education hours may be used to satisfy a portion of the twelve-hour annual continuing education requirement; however, post-license education hours shall not satisfy any mandatory continuing education topic(s) specified by the commission.

Licensees shall not receive duplicate credit for attending the same continuing education course from the same vendor in the same year.

Penalties for failure to take CE. The LREC may impose fines not to exceed \$5,000 in addition to imposing continuing education requirements. The LREC may impose education penalties such as prelicense qualifying education or continuing education. Education penalties may require “live” in class training.

The hours may not be used to satisfy any requirement for license renewal, transfer to active status, or as qualifying hours for any license or certification issued by the Louisiana Real Estate Commission.

## **Administrative Actions**

The commission may censure a licensee, registrant, or certificate holder or conditionally or unconditionally suspend or revoke any license, registration, or certificate issued under Louisiana Real Estate License Law fines or impose civil penalties not to exceed five thousand dollars, or impose continuing education requirements on licensees, registrants, or certificate holders 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.

## **Investigations and Hearings**

The commission may, upon its own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any licensee, registrant, certificate holder, or any person who assumes to act in any such capacity. Such an investigation may include inquiries and inspections of records.

Every licensee, registrant, and certificate holder shall cooperate fully with and answer all questions propounded by commission personnel conducting an investigation, inquiry, or records inspection.

Every licensee, registrant, and certificate holder shall produce any document, book, or record in his possession, or under his control, relative to any investigation, inquiry, or records inspection conducted by commission personnel.

The commission shall not become involved in disputes between licensees or registrants in any matter regarding the entitlement to or payment of commissions, fees, or compensation involving the sale or lease of real estate.

### **Formal Hearings**

All formal public adjudicatory hearings shall be conducted under the auspices of R.S. 37:1456 and Chapter 13 of Title 49 of the Louisiana Revised Statutes. The order issued by the commission pursuant to any formal public adjudicatory proceeding shall become effective on the eleventh day following the date the order is issued by the commission and entered into the record at the proceedings.

The date of entry is the date the order is issued by the commission and entered into the record at the formal adjudicatory proceedings.

If a request for rehearing, reopening, or reconsideration of the order of the commission is timely filed and denied by the commission, the order of the commission shall become final on mailing of the notice of the commission's final decision on the request.

### **Informal Hearings**

At the informal hearing, no evidence will be presented, no witnesses will be called, and no formal transcript of the proceedings will be prepared by the commission. Statements made during the informal proceedings may not be introduced at any subsequent formal adjudicatory proceedings without the written consent of all parties to the informal hearing.

# Appendix

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Note: All of the documents listed above, including the LREC Advertising Guidelines Checklist can also be found in the back pocket of this binder.



## Exhibit 1

### **Customer Information Form**

#### What Customers Need to Know When Working with Real Estate Brokers or Licensees

*This document describes the various types of agency relationships that can exist in real estate transactions.*

**AGENCY** means a relationship in which a real estate broker or licensee represents a client by the client's consent, whether expressed or implied, in an immovable property transaction. An agency relationship is formed when a real estate licensee works for you in your best interest and represents you. Agency relationships can be formed with buyers/sellers and lessors/lessees.

**DESIGNATED AGENCY** means the agency relationship that shall be presumed to exist when a licensee engaged in any real estate transaction, except as otherwise provided in LA R.S. 9:3891, is working with a client, unless there is a written agreement providing for a different relationship.

- The law presumes that the real estate licensee you work with is your designated agent, unless you have a written agreement otherwise.
- No other licensees in the office work for you, unless disclosed and approved by you.
- You should confine your discussions of buying/selling to your designated agent or agents only.

**DUAL AGENCY** means an agency relationship in which a licensee is working with both buyer and seller or both landlord and tenant in the same transaction. Such a relationship shall not constitute dual agency if the licensee is the seller of property that he/she owns or if the property is owned by a real estate business of which the licensee is the sole proprietor and agent. A dual agency relationship shall not be construed to exist in a circumstance in which the licensee is working with both landlord and tenant as to a lease that does not exceed a term of three years and the licensee is the landlord. Dual agency is allowed only when informed consent is presumed to have been given by any client who signed the dual agency disclosure form prescribed by the Louisiana Real Estate Commission. Specific duties owed to both buyer/seller and lessor/lessee are:

- To treat all clients honestly.
- To provide factual information about the property.
- To disclose all latent material defects in the property that are known to them.
- To help the buyer compare financing options.
- To provide information about comparable properties that have sold, so that both clients may make educated buying/selling decisions.

- To disclose financial qualifications to the buyer/lessee to the seller/lessor.
- To explain real estate terms.
- To help buyers/lessees arrange for property inspections
- To explain closing costs and procedures.

**CONFIDENTIAL INFORMATION** means information obtained by a licensee from a client during the term of a brokerage agreement that was made confidential by the written request or written instruction of the client or is information the disclosure of which could materially harm the position of the client, unless at any time any of the following occur:

- The client permits the disclosure by word or conduct.
- The disclosure is required by law or would reveal serious defect.
- The information became public from a source other than the licensee.

By signing below, you acknowledge that you have read and understand this form and that you are authorized to sign this form in the capacity in which you have signed.

Buyer/Lessee:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Licensee: \_\_\_\_\_

Date: \_\_\_\_\_

Seller/Lessor:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Licensee: \_\_\_\_\_

Date: \_\_\_\_\_

- To help the buyer compare financing options.
  - To provide information about comparable properties that have sold, so both clients may make educated buying/selling decisions.
  - To disclose financial qualifications of the buyer/lessee to the seller/lessor.
  - To explain real estate terms.
  - To help buyers/lessees arrange for property inspections.
  - To explain closing costs and procedures.
- A dual agent **may not** disclose:
- Confidential information of one client to the other, without the client's permission.
  - The price the seller/lessor will take other than the listing price, without the permission of the seller/lessor.
  - The price the buyer/lessee is willing to pay, without the permission of the buyer/lessee.

**CONFIDENTIAL INFORMATION**

**Confidential information** means information obtained by a licensee from a client during the term of a brokerage agreement that was made confidential by the written request or written instruction of the client or is information the disclosure of which could materially harm the position of the client, unless at any time any of the following occurs:

- The client permits the disclosure by word or conduct.
- The disclosure is required by law or would reveal serious defect.
- The information becomes public from a source other than the licensee.

Confidential information shall **not** be considered to be about the physical condition of the property.

Confidential information can be disclosed by a designated agent to his broker for the purpose of seeking advice or assistance for the benefit of the client.

**CONCLUSION**

The Louisiana Real Estate License Law and the Louisiana Real Estate Commission Rules and Regulations require a real estate licensee to provide you with this informational pamphlet on brokerage agency relationships. For additional information on agency disclosure matters, visit the Louisiana Real Estate Commission website at:

[www.lrec.gov](http://www.lrec.gov)



Louisiana Real Estate Commission  
 5071 Interline Avenue  
 Baton Rouge, LA 70809  
 1-800-821-4529 (LA only)  
 1-225-925-1923



**CUSTOMER INFORMATION PAMPHLET**

*What Customers Need to Know  
 When Working With  
 Real Estate Brokers or Licensees*

As real estate transactions have become more complex and varied, real estate brokerage arrangements have evolved to meet the changing needs of customers entering this market. This pamphlet provides a description of the different types of brokerage arrangements available to customers, so that they may choose the brokerage services best suited to their needs.

Under Louisiana's real estate agency law, a licensee engaged in any real estate transaction shall be considered to be representing the person with whom he/she is working, unless there is a written agreement between the broker and the person providing that there is a different relationship or the licensee is performing only ministerial acts on behalf of the person.

A real estate broker and his/her associated licensees can provide valuable real estate services, whether in the form of basic customer services, or through client-level agency representation. The services you expect will depend upon the legal relationship you establish with the company. It is important for you to discuss the information contained inside with the real estate licensee, and to agree on whether your business relationship will be that of a customer or a client, and if a client, the type of agency relationship that will be in your best interest.

This information is provided in accordance with R.S. 37:1455 (A)(21) and R.S. 37:1467 to help you be more informed in the buying, selling, or leasing of real estate. In whatever manner you choose to be represented, the goal is generally the same. The real estate licensee is trying to assist you in the sale, purchase, or lease of real estate upon terms acceptable to all parties. For additional information, you may contact the Louisiana Real Estate Commission at 1-800-821-4529 or 1-225-925-1923.

**CUSTOMER**

The **customer** is a person who is provided services by a real estate licensee, but who is not a client of the real estate licensee because the licensee is only performing ministerial acts. In this case, the real estate licensee is not acting as an agent. The actual services you receive from a real estate licensee depend on the arrangement that is established between you and the licensee.

Licensees are allowed to provide ministerial acts to customers without creating an agency relationship; ministerial acts are acts that a licensee may perform for a person that are informative in nature. Examples include, but are not limited to:

- Responding to phone inquiries by persons as to the availability and pricing of brokerage services or pricing on a particular piece of property or location of a property.
- Conducting an open house and responding to questions about the property from a person.
- Setting an appointment to view a property.
- Responding to questions from persons walking into a licensee's office concerning brokerage services offered or particular properties.
- Accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property.
- Describing a property or the property's condition, in response to a person's inquiry.
- Completing business or factual information for a person represented by another licensee on an offer or contract to purchase.
- Showing a person through a property being sold by an owner on his/her own behalf.
- Referral to another broker or service provider.

**CLIENT**

A **client** is one who engages a licensee for professional advice and services as their agent.

**AGENCY**

**Agency** means a relationship in which a real estate broker or licensee represents a client by the client's consent, whether expressed or implied, in an immovable property transaction. An agency relationship is formed when a real estate licensee works for you in your best interest and represents you. Agency relationships can be formed with buyers/sellers and lessors/lessees.

**DESIGNATED AGENCY**

**Designated agency** means the agency relationship that shall be presumed to exist when a licensee engaged in any real estate transaction, is working with a client, unless there is a written agreement providing for a different relationship.

- The law presumes that the real estate licensee you work with is your designated agent, unless you have a written agreement otherwise.
- No other licensees in the office work for you, unless disclosed and approved by you.
- You should confine your discussions of buying/selling to your designated agent or agents only.

**DUTIES THE DESIGNATED AGENT OWES A CLIENT**

- To obey all lawful requests
- To promote your best interest
- To exercise reasonable skill and care

- To keep information that could materially harm your negotiation position confidential
- To present all offers in a timely manner
- To seek a transaction at the price and terms acceptable to you
- To account for all money or property received from the client in a timely manner.

*Note: When representing you as a client, your agent does not breach their duty to you by showing alternate properties to the buyers, showing properties in which you are interested to other buyer clients, or receiving compensation based on a percentage of the property sales price.*

**DUAL AGENCY**

**Dual agency** means an agency relationship in which a licensee is working with both buyer and seller or both landlord and tenant in the same transaction. However, such a relationship shall not constitute dual agency if the licensee is the seller 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. A dual agency relationship shall not be construed to exist in a circumstance in which the licensee is working with both landlord and tenant as to a lease which does not exceed a term of three years and the licensee is the landlord.

Dual agency is allowed only when informed consent is presumed to have been given by any client who signed the dual agency disclosure form prescribed by the Louisiana Real Estate Commission. Specific duties owed to both buyer/seller and lessor/lessee are:

- To treat all clients honestly.
- To provide factual information about the property.
- To disclose all latent material defects in the property that are known to them.

(cont. on back)

**ACKNOWLEDGMENT**

Your signature only confirms that you have received information on agency law and in no way enters you into a contract.

Buyer(s)/Lessee(s)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name and date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name and date

Seller(s)/Lessor(s)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name and date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name and date

Licensee

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name and date

This form will be maintained by the real estate licensee for a period of five years, in accordance with Chapter 37, Section 3733.D of the Louisiana Real Estate Commission Rules and Regulations.





### Exhibit 3

## DISCLOSURE AND CONSENT TO DUAL AGENT DESIGNATED AGENCY



This document serves three purposes:

1. It discloses that a real estate licensee may potentially act as a disclosed dual agent who represents more than one party to the transaction.
2. It explains the concept of disclosed dual agency.
3. It seeks your consent to allow the real estate agent to act as a disclosed dual agent.

A licensee may legally act as a dual agent only with your consent. By choosing to sign this document, your consent to dual agency representation is presumed. Before signing this document, please read the following:

The undersigned designated agent(s) \_\_\_\_\_  
(Insert name(s) of licensee(s) undertaking dual representation)

and any subsequent designated agent(s) may undertake a dual representation represent both the buyer (or lessee) and the seller (or lessor) for the sale or lease of property described as

\_\_\_\_\_  
(List address of property, if known)

The undersigned buyer (or lessee) and seller (or lessor) acknowledge that they were informed of the possibility of this type of representation. The licensee(s) will undertake this representation only with the written consent of ALL clients in the transaction.

Any agreement between the clients as to a final contract price and other terms is a result of negotiations between the clients acting in their own best interests and on their own behalf. The undersigned buyer (or lessee) and seller (or lessor) acknowledge that the licensee(s) has explained the implications of dual representation, including the risks involved. The undersigned buyer (or lessee) and seller (or lessor) acknowledge that they have been advised to seek independent advice from their advisors or attorneys before signing any documents in this transaction.

#### What A Licensee Can Do for Clients When Acting as A Dual Agent

- Treat all clients honestly.
- Provide information about the property to the buyer (or lessee).
- Disclose all latent material defects in the property that are known to the licensee(s).
- Disclose financial qualifications of the buyer (or lessee) to the seller (or lessor).
- Explain real estate terms.
- Help the buyer (or lessee) to arrange for property inspections.
- Explain closing costs and procedures.
- Help the buyer compare financing alternatives.
- Provide information about comparable properties that have sold so that both clients may make educated decisions on what price to accept or offer.

**What A Licensee Cannot Disclose to Clients When Acting as A Dual Agent**

- Confidential information that the licensee may know about the clients, without that client's permission.
- The price the seller (or lessor) will take other than the listing price without permission of the seller (or lessor).
- The price the buyer (or lessee) is willing to pay without permission of the buyer (or lessee).

You are not required to sign this document unless you want to allow the licensee(s) to proceed as a dual agent(s), representing BOTH the buyer (or lessee) and the seller (or lessor) in this transaction. If you do not want the licensee(s) to proceed as a dual agent(s) and do not want to sign this document, please inform the licensee(s).

By signing below, you acknowledge that you have read and understand this form and voluntarily consent to the licensee(s) acting as a dual agent(s), representing BOTH the buyer (or lessee) and the seller (or lessor) should that become necessary.

\_\_\_\_\_  
Buyer or Lessee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Buyer or Lessee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Licensee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Seller or Lessor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Seller or Lessor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Licensee

\_\_\_\_\_  
Date