



# **Broker and Agent Responsibilities**

## **Course Orientation**

## **Instructor 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:**

This course is an overview of the various responsibilities of real estate licensees, both brokers and salespersons, as specified in the Louisiana Real Estate License Law, and the Rules and Regulations of the Louisiana Real Estate Commission. The course focuses on not only the responsibilities when dealing with the Real Estate Commission, but also those which are incumbent on licensees when dealing with their respective broker, with each other, and with the public.

## **Course Goal:**

The primary goal of this course is to reaffirm for licensees those responsibilities of which they must be cognizant when dealing in a business relationship with each other and the public.

## **Course Objectives:**

### **Module 1**

Upon completion of this module, the learner will be able to:

- Identify the education requirements for both active brokers and agents, as well as those for inactive licensees.
- Explain the license renewal process for both active and inactive licensees, including the procedures to be followed to regain active status after being inactive.
- Identify the three types of escrow accounts, and explain the purpose and function of each account, as well as acceptable procedures in utilizing each.

### **Module 2**

Upon completion of this module, the learner will be able to:

- Explain the requirements for advertising residential property, including disclosures that apply to print and Internet advertising.
- List and explain the forms and mandated disclosures used in real estate transactions.
- Identify at least 10 of the 35 specific reasons for which a licensee may have their license revoked by the Louisiana Real Estate Commission.

### **Module 3**

Upon completion of this module, the learner will be able to:

- Define and explain dual agency, and several dangers involved in its use.
- List three duties a licensee has to the client and to a customer.
- Explain informed consent, and the duties a licensee has as a dual agent.

### **Module 4**

Upon completion of this module, the learner will be able to:

- Identify the types of contracts and forms that should be maintained in a well-managed forms manual, and explain why these forms should be prepared by the broker.
- Explain the purpose of a staff meeting, and list three things that should and should not take place at staff meetings.
- Explain the advantages of farming, and identify three farming techniques.

### **Required Course Material:**

This course is entirely self-contained and does not require additional study materials.

### **REQUIRED HARDWARE and SOFTWARE (Internet-Based Courses):**

All course materials are available online. To access, a student will need a connection to the Internet. Any Internet speed will be adequate for the text-based version; however, a high speed connection is recommended for the course presented in PowerPoint/Audio format, so the student may appreciate the visual aesthetics of the presentation. Any additional software, such as Adobe Reader (needed to access the .pdf files), is available in the course for immediate download.

### **Completion Expectations:**

#### **Prerequisites:**

- There are no educational prerequisites for this course; however, students are expected to have high school level reading and mathematics ability.

#### **Upon registering:**

- Students must complete the course lessons/modules and the final exam before the course expiration date.
  - Each lesson/module will have a quiz at the end that must be passed in order to continue to the next lesson/module.
    - The quiz will consist of multiple-choice format questions requiring a minimum passing score of 70%.
    - Quiz questions will be displayed one at a time.
    - Upon submission of the student's response (answer) to each presented quiz question, the system will display the correct/incorrect answer for the student's review.
  - The final exam questions are also presented in multiple-choice format requiring a passing score of 70% or higher.
  - The username and password will be deactivated after the course expiration date has passed.
- The course completion certificate will be issued to the student upon passing the final exam at end of the course.

### **School Policies:**

#### **Registration:**

- The student is responsible for verification of qualifications for licensing, before registering for a course of study.
- Registrants with any form of criminal history, including misdemeanor or felony convictions, or who are currently on parole, must contact the relevant licensing agency before registering for any pre-licensing or pre-certification course.
- An e-mail account is essential to participate in the online program.

- Any attempt to take the course under an assumed identity, or to accept assistance from others in completing any portion of the course, may result in rejection of a license application, revocation of an existing license, fines, or other penalty provided by law governing the relevant state regulatory agency to whom the student submitted documentation.

### Course Participation:

- Students are asked to please be certain that their address book is updated to include acceptance of e-mails from StudentServices@ProEducate.com and Instructor@ProEducate.com
- Instructors may not, in any venue, answer questions of a personal, professional, business, or legal nature, and students should not interpret any information received from instructors, or course content, as being legal or professional advice.
- The instructional staff will respond to questions by e-mail as quickly as possible. In general, questions received by noon on any business day are responded to by 5 pm the following business day. Students who abuse the e-mail opportunity may be dropped from the course, solely at the discretion of the school, without penalty to the school beyond refund of tuition.

### School Contact Information:

- **By Phone:** For questions regarding **administrative** issues, the administrative offices may be contacted by phone at (504) 454-9866 or (800) 966-9866, weekdays between 8 a.m. and 5 p.m. central time.
- **By E-mail:** Ask technical or course content questions 24 hours a day by e-mailing the school office at the addresses listed below. A response will typically be received by close of business on the next business day.
  - **StudentServices@ProEducate.com for questions or comments about registration, administrative issues, purchases from the online store, or technical issues.**
  - **Instructor@ProEducate.com for questions regarding course content.**
- **In Person:** We are in the office to assist you with administrative questions Monday - Friday 8:00 a.m. to 5:00 p.m. central time. We are located at 4200 S. I-10 Service Rd. W., Suite 134, Metairie, Louisiana 70001 (Boy Scouts of America Building).

### Additional Information Regarding the Online Course:

- During the allotted class time, students will have access to the course 24 hours a day and may login and work on the course at their convenience.
- Students will be issued a completion certificate upon successful completion of the course.
- During the course, if the students have questions about the course content, they may click on the “e-mail instructor” button and send a question to the instructor.
  - E-mails received by 3 PM on any business day will be responded to on the next business day.
  - Students are asked to please be very specific about the location of the content they are questioning (lesson #, topic, etc.)
    - Instructors are permitted to respond only to questions specifically related to the course content.
    - Questions regarding personal situations, unrelated to the specific course material or of a legal nature, may not be responded to.
- The course also makes a detailed glossary available to the students. Students may click on the glossary to study the definition of terms with which they are not familiar.
- The “Resources” section of the course makes forms and documents available to assist students in their studies.
- Upon completion of the course material, each student will be required to respond to a course evaluation in addition to a multiple choice final examination.

**Modules (Lessons), Timings, and Outline:**

<b>Broker and Agent Responsibilities (Internet-Based Presentation)</b>			
<b>Module</b>	<b>Description</b>	<b>Time Schedule</b>	<b>Segment Time in Minutes</b>
<u>Module 1:</u> Louisiana Law and Regulations – Part I	PowerPoint/Audio presentation and case studies presented as multiple choice questions.	Lesson Content	25
		Case Studies	5
		Quiz (10 questions)	10
<b>Total Time of Module 1</b>			<b>40</b>
<u>Module 2:</u> Louisiana Law and Regulations – Part II	PowerPoint/Audio presentation and case studies presented as multiple choice questions.	Lesson Content	25
		Case Studies	5
		Quiz (10 questions)	10
<b>Total Time of Module 2</b>			<b>40</b>
<u>Module 3:</u> Agency	PowerPoint/Audio presentation and case studies presented as multiple choice questions.	Lesson Content	25
		Case Studies	5
		Quiz (10 questions)	10
<b>Total Time of Module 3</b>			<b>40</b>
<u>Module 4:</u> Office Practices	PowerPoint/Audio presentation and case studies presented as multiple choice questions.	Lesson Content	25
		Case Studies	5
		Quiz (10 questions)	10
<b>Total Time of Module 4</b>			<b>40</b>
Final Exam	Examination in multiple-choice format with passing score of 75%	40 questions	<b>40</b>
<b>Total Course Minutes</b>			<b>200</b>

## **Broker and Agent Responsibilities Course Outline**

### **Module 1: Louisiana Law and Regulations – Part I**

- Education Requirements
  - 45 hours post-licensing
  - Within 180 days of licensing
  - Will satisfy 8 hours of CE
  - Does not satisfy mandatory CE
  - 12 hours of CE each year
  - 4 of 12 hours in the mandatory subject
- Names on Licenses
  - Legal names only
  - Legal entities
  - Revoked licenses
- Trade Names
  - Must be registered with the Secretary of State
  - Distinguish from others
- Concurrent Licensing
  - Brokers
  - Associate brokers
  - Salespeople
  - Concurrent timeshare registration
- Structure of a Brokerage
  - Proprietorship
  - Structured entity
  - Must have a responsible broker
  - Broker may represent multiple entities
- Independent Contractor Status of Licensee
  - Must be licensed
  - Not be paid by the hour
  - Must have a contract
- Renewal Applications
  - Individual licensee responsible
  - Must wait for broker to renew
  - No activity after December 31
- License Renewal - Active
  - All licenses issued for one year
  - Licenses expire on December 31
  - Three month delinquent renewal period
- License Renewal - Inactive
  - Issued for one year, just like active
  - Expires on December 31
  - Same 3 month delinquent renewal period
- Change of Licensing Status
  - From active to inactive
  - Structured entities must remain active
  - Individual brokers
- Going Inactive
  - Can be done anytime
  - Can be done while delinquent
- While Inactive
  - May not act as a licensee
  - Must renew inactive license
  - May transfer to active status
  - CE not required while inactive
- Returning from Inactivity (1 to 5 years)
  - 1 to 3 years inactive - 20 hours CE
  - 4 to 5 years inactive - 40 hours CE
  - Need for license law and rules & regulations
  - Over 5 years inactive - 80 hours CE

- Returning to Active Status
  - Without prior completion of post-licensing
  - Prior completion of post-licensing
- Veterans Waiver
  - Active military
  - Spouses
- License Transfer Fee Exceptions
  - Broker's death
  - Failure to renew broker license
  - Suspension or revocation of broker
  - Transfer of broker to inactive status
  - Termination of licensee by broker
- Death of a Broker
  - Temporary assumption of duties
- Duties of the Appointed Broker/Salesperson
  - Notify licensees of death
  - No new contracts
  - Licenses returned to Commission
- Impaired Brokers
  - Individual broker
  - Sponsoring broker
  - Qualifying broker
- Termination of a Licensee
  - Decision by licensee or the broker
  - 5 days to return the license
  - Stop all activity
- Termination of Broker Representation or Dissolution
  - Return of licenses within 10 days
  - New qualifying broker within 5 days
  - If merger, notify LREC within 5 days
- Termination Requirements
  - Relinquishment of property
  - Return of keys
  - Failure to comply
- Broker-Agent Disputes
  - LREC will not be involved
  - Financial issues are a civil matter
  - License must still be returned to LREC
- Broker's Place of Business
  - Main office address
  - Branch offices
- Branch Offices
  - Licenses
  - Supervision
  - Duties
  - Penalties
- Change of:
  - Business address
  - Business telephone number
  - Post office box
- Payment of Commissions to Unlicensed Individuals
  - Illegal to pay unlicensed individuals
  - Business telephone number
  - Payment of referral fees
- Broker's Obligation Not To Pay Commissions
  - Agent sharing with unlicensed person
- Payment To Former Licensees
  - Former licensees
  - Transferees

- Payments To Business Entities of Licensees
  - Commissions can be assigned to companies
  - Licensee must be the sole participant
- Sharing Referral Brokerage Fees Across Jurisdictions
  - Sharing with licensees permitted
  - Referral agent must not be involved in transaction
- Referral Fees Require Reasonable Cause
  - An introduction
  - A contractual relationship
  - Referral prior to contract initiation
- Interference with Brokerage Relationships
  - Demanding referral fees without cause
  - Reducing relocation benefits
- Interfering with Contractual Relationships
  - Do not counsel on contract termination
- Damages for Interference with Contractual Relationships
  - Actual damages
  - Attorney fees
- Non-Compete Agreements
  - Agent's right to rescind
  - Bold text
- Errors and Omission Insurance
  - Required of all active licensees
  - Obtain privately or from LREC
  - Not required while inactive
- Types of Escrow Accounts
  - Sales escrow account
  - Rental trust account
  - Security trust account
- Who has an escrow account?
  - Only brokers
  - Not associate brokers
  - Not salespeople
- Specifics of Escrow Accounts
  - Naming the account
  - Location of the account
  - Interest on the account
  - Branch office and additional accounts
  - Signatory rights on checking accounts
  - Personal funds in escrow accounts
  - \$2,500 limit
  - Exception to the \$2,500 limit
- Deposits Into Escrow Accounts
  - Money
  - Anything of value
- Withdrawing Funds From An Escrow Account
  - Limited to 10 specific reasons
- Handling Escrow Disputes
  - Disburse funds on mutual consent
  - Disburse on interpretation of the contract
  - Deposit funds with the court
  - Disburse funds on order of the court
- Case Studies

## **Module 2: Louisiana Law and Regulations – Part II**

- Advertising
  - Disclosures
  - Representations
  - Salespeople
  - Associate brokers



- Accuracy In Advertising
  - Cannot be inaccurate
  - Cannot be misleading
  - Cannot misrepresent
- Advertisements of Residential Property
  - Print advertisements
  - Month and year
  - Commercial publications
  - Brochures
- Advertisements By Franchise Organizations
  - Disclosure to public
- Agent Owner – Licensed Agent
  - Licensee owned property
  - “Licensed real estate agent”
  - Licensee purchases
  - Exception for listed property
- Internet Advertising - Brokers
  - Broker’s name
  - Main office location
- Electronic Communication - Brokers
  - Broker’s name
  - Main office location
- Internet Advertising - Sponsored Licensees
  - Licensee’s name
  - Brokerage name
  - Main office location
- Electronic Communication - Sponsored Licensees
  - Licensee’s name
  - Brokerage name
  - Main office location
- Licensee as a Principal
- Property Disclosure
- Agency Disclosure Pamphlet
  - Required in all transactions
- Agency Disclosure
  - The pamphlet
  - When to present
  - Signatures
  - Refusal to sign the pamphlet
  - Maintaining records
- Required Purchase Agreement Form
- Requirement to Use Purchase Agreement Form
  - Required on all residential sales
  - Modifications not permitted
- Offender Notification
  - Residential rental or lease agreements
  - Residential sales agreements
- Mold Disclosure
- Mold Informational Pamphlet
  - Distributed to buyers
  - Timing for delivery
  - No additional information required
- Errors in Mold Pamphlet
  - Licensee not responsible
  - Must disclose material defects
- Timely Presentation
  - Offers
  - Counteroffers

- Negotiations
  - Listing broker
  - Designated listing agent
  - Buyer's broker
  - Designated buyer's agent
- Transactions
  - Date and time
  - Notify designated agent
  - Document delivery
- Rejections
  - Offers
  - Counteroffers
- Broker Rejection of Offers
  - Sign in lieu of owner
  - Copies
  - Maintain records
- Expiration Dates
  - Sales agreements
  - Management agreements
- Providing Copies
  - Immediately upon signing
  - Within 5 days for multiple signers
- Recordkeeping Requirements
  - Records of transactions must be maintained
  - LREC may inspect records
  - Records may be subpoenaed
  - Only brokers keep records
- Maintaining Documents
  - Bank statements
  - Cancelled checks
  - Deposit slips
  - Documents of transactions
  - 5 year requirement
- Duty of Licensees to Report Legal Action
  - Final judgments
  - Prosecution, arrest, or conviction
  - Bankruptcy
- Reporting Legal Action
  - Report within 10 days
- Reporting Bankruptcy
  - Report within 10 days
- Knowledge of the Law
  - Licensee's responsibility
  - Regular review is important
- Commission Investigations
  - Own motion
  - Complaints in writing
  - Financial disputes
- Suspension and Revocation
  - Return licenses
  - 72 hours
- Thirty-Five Ways to Lose a License
  - 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 the License Law.
  - 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 the License Law.
- 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. 9:3195 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.
- Case Studies

### **Module 3: Agency**

- Returned Checks to LREC
  - Not the bank's fault
  - 10 days to pay with additional fee
- Dual Agency
  - Definition
- Ministerial Acts
  - Definition
  - Examples
- Relationships
  - Assumption of representation
  - Written agreement
- Duties of Licensees to Clients
  - Basic responsibilities
  - Showing alternative properties
  - Basis of commission due licensee
  - Providing false information
  - Working with mortgage brokers
- Duties of Licensees to Customers
  - Fair treatment
  - Ministerial acts
- Termination of Agency Relationship
  - No further duties
  - Confidential information
- Dual Agency
  - Informed consent required
  - Presumed with dual agency form
  - Duties of a licensee
  - What a licensee may not disclose
  - Withdrawing from dual agency
- Subagency
  - Written agreement required
- Vicarious Liability
  - Client not responsible for agent
- Case Studies

### **Module 4: Office Practices**

- The Policies and Procedures Manual
  - Should be well organized
  - Should be up to date
  - Should have staff input
  - Should address all areas
- Contracts and Forms Manual
  - Contains commonly used forms and contracts
  - Should be prepared by the broker
- Training Programs
  - Are a major concern to brokers
  - Some training is required by law
  - Well prepared seminar = months of experience
  - Speakers available at little to no cost
  - Experienced agents conduct seminars

- Staff Meetings
  - Should be regularly scheduled
  - Monday morning is a good time
  - Should be positive
  - No personal criticism
  - Should have an agenda
  - Introduce new listings
  - Goal setting, team building, and sales techniques
  - Office tours
- Goal Setting
  - Help calculate efforts and rewards
  - Helps determine company budgets
  - Accurate data is needed for accurate goals
- Checklist for New Associates
  - Office procedures
  - Field preparedness
  - Office equipment
- Farming System
  - Why farming?
  - Who should farm?
- Contests
  - Motivational tool
  - Increase productivity
  - Several small prizes
  - Realistic and attainable goals
  - Brief time frame
- Associate Joint Ventures (Teams)
  - Share commission
  - Personality conflicts
  - Vacation coverage
  - Agreements in writing
  - Broker's consent
- Press Releases
  - Brief announcement
  - Informative
  - Increase credibility
  - Basics
  - Printed free of charge
  - Standard guidelines
  - Effective management tool
- Automobile Insurance
  - Require agents to carry
  - Policy limits
- Key Security
  - Extremely important
  - High security
  - Numbered system
- Sexual Harassment
  - Verbal
  - Non-verbal
  - Broker's responsibility
  - Broker's liability
- Case Studies