

ALABAMA REAL ESTATE COMMISSION
ADMINISTRATIVE CODE

CHAPTER 790-X-3
DISCIPLINARY ACTIONS

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790-X-3-.01 Change Of Address.

It shall be a violation for any licensee to change the address of his place of business as set out on his numbered license certificate and fail to notify the Commission in writing within thirty (30) days after such change has been made. Such notification shall include both the old and new addresses of the company. To effect a change of business address, the qualifying broker must submit written notification to the Commission office with a \$25.00 transfer fee for the company or branch license and for each license issued to that company or branch.

Author: Alabama Real Estate Commission

Statutory Authority: Code of Ala. 1975, §§34-27-8, 34-27-32, 34-27-35.

History: Filed September 30, 1982. **Amended:** Filed August 15, 1985; August 7, 1992; October 21, 1992. **Amended:** Filed November 25, 2003; effective December 30, 2003. **Amended:** Filed August 27, 2018; effective October 11, 2018.

790-X-3-.02 Returned Check Fee.

The Commission may charge a fee for a check, draft or other negotiable instrument returned to the Commission unpaid up to the maximum amount allowed by §8-8-15 Code of Ala. 1975.

Author: Alabama Real Estate Commissioners

Statutory Authority: Code of Ala. 1975, §§34-27-8, 34-27-36(a) (16).

History: Filed September 30, 1982. **Amended:** Filed November 21, 1983. **Repealed:** Filed October 18, 1994; effective November 22, 1994. **New Rule:** Filed September 12, 2008; effective October 17, 2008.

790-X-3-.03 Deposit Of Funds.

(1) The deposit and accounting for at all times of all funds belonging to or being held for others in a separate federally insured account or accounts in a financial institution located in Alabama shall require that the qualifying broker be a customer of the financial institution holding all such accounts and the qualifying broker shall be one of the persons with authority to deposit and withdraw funds and to write or make checks as necessary on all such accounts.

(2) Each real estate salesperson or associate broker shall pay over to his or her qualifying broker all funds coming into his or her possession in trust for other parties immediately upon receipt of same.

(3) Each qualifying broker is responsible for deposit of all funds belonging to others coming into his or her possession or of a salesperson or associate broker licensed under him or her where such funds are to be held in trust, unless the qualifying broker is expressly relieved of such responsibility in writing. In cases where the funds are U. S. currency, i.e. cash as opposed to a check or note, these funds shall be deposited immediately. In cases where a check is received as earnest money and the contract form states that the check is to be held for a specific length of time or until the occurrence of a specific event, then the check shall be deposited when the contract form states, or if no time for deposit is specified in the contract form, then the check shall be deposited when the offer becomes a contract.

(4) Funds to be held in trust under a contract for sale involving more than one qualifying broker shall be held and deposited by any of the qualifying brokers involved in the sale. All funds to be held in trust, whether by contract for sale, or by lease or property management agreement, shall be held and deposited by the

qualifying broker who is providing these services to the owner. In cases where a successor qualifying broker is to provide these services, the first broker shall provide a complete accounting of the funds and shall transfer the funds to the successor broker. The qualifying broker who is currently providing services to the owner shall be responsible to the public and to the commission for all funds. Upon request by the Commission or its authorized representative, each qualifying broker shall promptly account for any trust funds being held by that qualifying broker.

(5) Disbursement of funds held in trust: Unless otherwise stated in this rule, each qualifying broker shall promptly disburse to the appropriate party or parties any trust funds within 7 business days of the consummation of the transaction for which the funds were deposited. If for any reason the transaction is not consummated, or if for any reason there is a disagreement involving to whom trust funds should be disbursed, the qualifying broker shall not disburse any trust funds except pursuant to a written agreement signed by all parties or pursuant to a court order.

(6) Disbursement of security deposits held in trust under a lease agreement:

(a) Residential leases security deposits: Refer to Code of Ala. 1975, Section 35-9A-201 Security Deposits; Prepaid Rent, and 35-9A-205 Limitation of Liability. Code of Ala. 1975, Sections 35-9A-201 and 35-9A-205 have priority and qualifying brokers shall comply with their instruction.

(b) Commercial leases security deposits:

1. Upon termination of the tenancy, money held for the landlord by a qualifying broker as security may be applied to the payment of accrued rent and the amount of damages that the landlord has suffered by reason of the tenant's noncompliance of the lease all as itemized by the qualifying broker in a written notice delivered to the tenant together with the amount due within 60 calendar days after termination of the tenancy and delivery of possession.

2. If the qualifying broker does not refund the entire deposit, the qualifying broker, within the 60-calendar day period, shall provide the tenant an itemized list of amounts withheld.

3. Upon vacating the premises, the tenant may provide to the qualifying broker a valid forwarding address, in writing, to which the deposit or itemized accounting, or both, may be mailed. If the tenant fails to provide a valid forwarding address, the qualifying broker shall mail, by first class mail, the deposit or itemized

accounting or both, to the tenant at the address of the property. Any deposit unclaimed by the tenant as well as any check outstanding shall be forfeited by the tenant after a period of 90 calendar days.

4. The qualifying broker's mailing, by first class mail, to the address provided in writing by the tenant, within 60 calendar days of the refund or itemized accounting, or both, is sufficient compliance with this chapter.

(c) Security deposits and trust funds subject to a management termination by a landlord or the qualifying broker: If a landlord and/or qualifying broker terminates a management agreement for leased properties, the qualifying broker shall provide an accounting of all security deposits, prepaid rents and other related escrows, and provide such accounting to the landlord or new manager of the property, within seven (7) business days of the management termination effective date, along with payment of funds. A qualifying broker, who is the manager of leased properties, whose leases include security deposits, is relieved of liability under the lease agreements and this chapter as to events occurring after written notice to the tenant of the termination of management and name of the new management.

(d) Security deposits subject to a sale of the property: If a landlord conveys property subject to a rental agreement in a good faith sale to a bona fide purchaser, the qualifying broker shall provide an accounting of all security deposits, prepaid rents and other related escrows, and provide such accounting to the purchaser, within seven (7) business days of the closing of the sale, along with the payment of funds, if such funds are not already transferred via sale closing documents. Upon the date of accounting and payment, the qualifying broker is relieved of trust funds liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the sale and name of the new management.

(7) This Rule shall not prohibit a broker from depositing with the appropriate court any trust funds which are the subject of disagreement among or between parties under the rules of interpleader or other lawful procedure.

Author: Alabama Real Estate Commission

Statutory Authority: Code of Ala. 1975, §§34-27-8, 34-27-36(a).

History: Filed September 30, 1982. **Amended:** Filed November 21, 1983; August 15, 1985; August 15, 1988. **Amended:** Filed November 17, 1995 effective December 22, 1995. **Amended:** Filed January 25, 1996; effective February 29, 1996. **Amended:** Filed August 25, 2006; effective September 28, 2006. **Amended:** Filed November 4, 2016; effective December 19, 2016.

790-X-3-.04 Estimated Closing Statement.

(1) The licensee who procures a written offer from a buyer in a single family residential transaction shall prepare and furnish to the buyer a complete estimated closing statement at the time the offer is signed by the purchaser. This statement must contain the licensee's best estimates of all costs the buyer is expected to have at closing and the approximate amounts of those costs. The buyer must acknowledge receipt of the estimated closing statement by signature on the form.

(2) The licensee who presents a written offer to a seller in a single family residential transaction shall prepare and furnish to the seller a complete estimated closing statement at the time the offer is presented to the seller. This statement must contain the licensee's best estimates of all costs the seller is expected to have at closing and the approximate amounts of those costs. The seller must acknowledge receipt of the estimated closing statement by signature on the form.

(3) For purposes of records retention, it is sufficient that each licensee retains in his or her qualifying broker's file the statements required of him or her under this rule. It is not necessary that cooperating brokers maintain both buyer's and seller's statements.

Author: Alabama Real Estate Commission

Statutory Authority: Code of Ala. 1975, §§34-27-8, 34-27-36(a) (22).

History: Filed September 30, 1982. **Amended:** Filed August 7, 1992. **Amended:** Filed November 4, 2016; effective December 19, 2016.

790-X-3-.05 Automatic Extensions.

Listing contracts shall contain no provision for automatic extensions.

Author: Alabama Real Estate Commission

Statutory Authority: Code of Ala. 1975, §§34-27-8, 34-27-2.

History: Filed September 30, 1982. **Amended (No changes made to the text, only Author and Stat. Auth.):** Filed August 27, 2018; effective October 11, 2018.

790-X-3-.06 Probable Cause Determination.

The investigator to whom a particular matter is assigned, in consultation with the Attorney General or his representative and

the Executive Director, shall determine whether probable cause exists regarding that matter for filing a formal complaint and/or holding a hearing for the refusal, suspension or revocation of a license or the fining or reprimanding of a licensee.

Author: Alabama Real Estate Commission

Statutory Authority: Code of Ala. 1975, §§34-27-8, 34-27-36.

History: Filed September 30, 1982. **Amended:** Filed November 21, 1983. **Amended:** Filed November 4, 2016; effective December 19, 2016.

790-X-3-.07 Hearings.

(1) If a formal complaint is filed against a licensee, the Commission may proceed to hold a hearing on the matter of the complaint at its discretion if the party or parties initiating the complaint and the party or parties against whom the complaint was made reach a settlement and wish the complaint withdrawn.

(2) Any licensee or unlicensed person or unlicensed entity charged with a violation of the Alabama Real Estate License Law has a right to a hearing. The right to a hearing may be waived by the accused. Settlement procedures including a plea of guilty and/or consent to disciplinary action may be utilized by agreement between the accused and the commission.

(3) The complainant(s) or respondent(s) who desire to have witnesses testify in their behalf may request that the Commission issue subpoenas for such witnesses by depositing with the Commission required funds in the form of a cashier's check or certified check, made payable to the Alabama Real Estate Commission.

(4) The per diem and mileage cost of witnesses for interested parties in a complaint hearing shall be twenty dollars (\$20.00) per diem. Mileage for subpoenaed witnesses will be the same as that as set from time to time under the requirements of §36-7-22, Code of Ala. 1975, for persons traveling on official business for the State and as published by the State of Alabama Department of Finance, Office of the State Comptroller.

Author:

Statutory Authority: Code of Ala. 1975, §§34-27-8, 34-27-37.

History: Filed September 30, 1982. **Amended:** Filed November 21, 1983. **Amended:** Filed September 12, 2008; effective October 17, 2008.

790-X-3-.08 Offers Made To Licensee (Repealed 10/11/18).

(Repealed)

Author:

Statutory Authority: Code of Ala. 1975, §34-27-8.

History: Filed November 21, 1983. **Amended:** Filed August 27, 1986. **Repealed:** Filed August 27, 2018; effective October 11, 2018.

790-X-3-.09 **Office Inspections.**

(1) The staff of the Alabama Real Estate Commission is authorized to make an inspection of any licensed real estate company to ensure that such company is in compliance with the Real Estate License Law and the Rules and Regulations of the Commission.

(2) In the event of an office inspection of a real estate company, its qualifying broker shall ensure that the business records required to be kept under state law or by the Rules and Regulations of the Commission are made available to such Commission representatives. These records may include but are not limited to:

(a) real estates licenses issued a company or broker

(b) R.E.C.A.D office policy

(c) files for closed transactions

(d) all pending sales files

(e) all property management contracts, lease agreements and rental records

(f) copies of the past six months bank statements with canceled checks for all escrow or trust accounts

(g) copies of recent bank reconciliation performed on all escrow or trust accounts

(h) checkbook and or electronic records of check registers for all escrow or trust accounts

(i) duplicate deposit tickets with validated bank receipts for all escrow or trust accounts

(j) any lists, ledgers or records documenting the funds held in escrow purposes. The office will all also be audited for the place of business signage under Administrative Code 790-X-2-.07 and place of business requirements under §34-27-2(a) (11).

(3) The Commission representative(s), at the Commission's expense, may make photocopies of records which the licensee is required to

maintain by the Real Estate License Law or by Rules and Regulations of the Commission.

Author: Alabama Real Estate Commission

Statutory Authority: Code of Ala. 1975, §§34-27-8, 34-27-36.

History: Filed November 21, 1983. **Amended:** Filed September 12, 2008; effective October 17, 2008.

790-X-3-.10 **Requirement Of A Formal Complaint.**

(1) The Commission staff may, in response to a complaint from an outside party or upon its own initiative, develop a Formal Complaint charging a licensee or timeshare seller with any violation of Code of Ala. 1975, Chapter 27 of Title 34, or a Commission Rule or Regulation where there is probable cause to believe that such a violation occurred.

(2) A Formal Complaint drawn by the Commission shall include at least the following:

(a) the name(s) of the party (or parties) against whom the complaint is being made;

(b) the legal authority and jurisdiction under which the charge is made;

(c) the type of license(s) held by the accused party (or parties) and the date each license was issued, and/or in the case of a charge of a violation by a timeshare developer or owner, the date the respective timesharing plan was registered;

(d) the particular section(s) of the law and/or the specific rule or order alleged to have been violated; and

(e) a brief description of the act(s) or omission(s) upon which each allegation of violation is made.

Author: Ronald Forehand

Statutory Authority: Code of Ala. 1975, §§34-27-8, 34-27-37, 34-27-61, 34-27-62, 34-27-68.

History: Filed November 21, 1983. **Amended:** Filed July 24, 1984; August 15, 1985.

790-X-3-.11 **Hearing Officer.**

(1) All hearings on contested cases before the Alabama Real Estate Commission shall be conducted by a hearing officer appointed by the Commission.

(2) The hearing officer shall have the authority to do all things necessary to ensure that such hearings are conducted in accordance with Alabama law and the Rules and Regulations of the Alabama Real Estate Commission.

Author:

Statutory Authority: Code of Ala. 1975, §§34-27-8, 34-27-37.

History: Filed May 15, 1984.

790-X-3-.12 Referral Fees (Repealed 9/27/96).

(Repealed)

Author: Members, Alabama Real Estate Commission

Statutory Authority: Code of Ala. 1975, §34-27-8.

History: Filed February 10, 1992. **Amended:** Filed August 7, 1992. **Repealed:** Filed August 23, 1996; effective September 27, 1996

790-X-3-.13 Agency/Brokerage Services Disclosure.

(1) The Real Estate Consumers Agency and Disclosure Act (RECAD) requires the Alabama Real Estate Commission to write a Real Estate Brokerage Services Disclosure form which describes the alternative types of brokerage services available to consumers in Alabama transactions. The use of this form is mandatory as required by RECAD and this rule. Additionally, the Commission has written a Consumer Information Booklet which is optional and may be used by any licensees who choose to use it.

(2) Licensees, except those engaged in rental or property management services, and those in transactions set out in Section 34-27-82 (d), are required to provide the Real Estate Brokerage Services Disclosure form to the consumer as soon as reasonably possible for his or her signature. Consumers are not required by law to sign the form, although the licensee should encourage that it be signed. If the consumer declines to sign, the licensee shall make a note to this effect on the form. The texts of the optional Consumer Information Booklet and the mandatory form follow:

A Consumer Information Booklet

What Consumers Need to Know When Working with a Real Estate Broker

As real estate transactions have become more complex and varied, the types of real estate brokerage arrangements available to the public have evolved to meet the changing needs of consumers entering this market. This booklet is intended to provide buyers and sellers with a description of the different types of brokerage arrangements so that

consumers can choose the type of brokerage services best suited to their needs.

Know Your Rights

At the initial contact between a licensee (both sales persons and brokers) and the public, the licensee shall be considered to be a transaction broker. As soon as reasonably possible and before the exchange of confidential information, Alabama law requires the licensee to provide you with a written disclosure form that describes different types of brokerage arrangements. You are encouraged to read and sign this disclosure form.

After disclosure you may then choose the type of brokerage agreement best suited to your needs. This brokerage agreement will contain a statement of the specific brokerage services the broker will provide. In the absence of a signed brokerage agreement, the transaction brokerage relationship will remain in effect. Make sure you talk to the real estate licensee with whom you are working to determine the type of services you need or will receive under alternative brokerage arrangements.

Customer or Client?

The most important thing you need to know when working with a real estate licensee is whether you are a client or a customer. A licensee owes certain duties to a client that are different from the services the licensee performs for a customer.

Agent and Client

An agent is a person who acts for or represents you in negotiations with other parties. The client or principal is the person the agent represents. The licensee when acting as an agent must loyally represent the best interest of the client by placing the interests of the client ahead of the interests of any other party. In a real estate transaction, when a real estate salesperson is employed as an agent, the salesperson is obligated to negotiate the best price and terms for his or her client.

What is a Customer?

A customer is a person who is provided services by a real estate broker, but who is not a client of the broker. In this case, the real estate licensee is not acting as an agent. The actual services you receive from a real estate broker depend on the arrangement that is established between you and the licensee. The different types of real estate agreements are described below.

There are basically three types of real estate brokerage relationships that can be established between the consumer and a real estate licensee: Single agency, limited consensual dual agency, and a transaction brokerage arrangement.

Transaction Brokerage

Transaction brokerage describes a brokerage arrangement whereby the real estate licensee assists one or more parties, who are customers, in a contemplated real estate transaction, without being the agent, fiduciary, or advocate of that party to the transaction. This means that real estate brokers and salespeople can act as intermediaries between buyers and sellers. With this type of brokerage arrangement, home buyers and sellers are customers and not clients of the licensee with whom they are working. The basic function of the licensee is to bring buyers and sellers together so that a real estate sale can be completed. Sellers will employ the licensee to help market their real estate by identifying qualified buyers and showing their properties to prospective purchasers. This will usually also involve advertising properties for sale in newspapers and other media. Sellers will commonly also rely on the expertise, experience, and advice of the real estate licensee to help make their property ready for sale and determine an appropriate asking price. Buyers, in turn, rely on the services of brokers to find and show them suitable real estate that they can afford and have the desired characteristics. Real estate professionals may also help consumers obtain mortgage financing as well as assist them with finalizing the real estate sale and recording the deed and other documents associated with the sale.

Transaction brokerage arrangements are usually best suited for consumers who are primarily interested in the marketing services and expertise that can be provided by real estate professionals, but who do not need an agent to represent them in the negotiations for the sale or purchase of real estate. Under transaction brokerage, the licensee must provide brokerage services to all parties honestly and in good faith and avoid showing favoritism to either buyer or seller. Alabama law also requires all licensees exercise reasonable care and skill when providing brokerage services, answer all questions completely and accurately, and present all written purchase offers to sellers promptly and in a truthful manner. Licensees must also keep confidential any information given to them in confidence, unless disclosure of this information is required by law. For sellers, this means that licensees must answer a buyer's questions about the condition of the property completely and honestly. In addition, the buyer must be told about any hidden defects known to the licensee that could affect the health or safety of occupants.

Single Agency

A single agency arrangement describes a relationship whereby the real estate licensee represents only one party in a real estate sales transaction. In the case of a single agency brokerage arrangement, the real estate licensee represents either the buyer or the seller, but not both parties to the real estate transaction. This type of brokerage arrangement is most appropriate for consumers who need the advice and negotiating skills of real estate professionals in addition to their marketing services. If a seller enters into a single agency agreement with a real estate broker, the broker is referred to as a seller's agent. Under this arrangement the broker must represent only the seller in the negotiations with buyers. Here the broker will seek the highest possible price and best possible sale terms for the seller. This type of brokerage arrangement can involve the use of subagents, especially in situations where properties are marketed through a multiple listing service.

Subagents are empowered to act for another broker in performing real estate services for that broker. The subagent owes the same duties to the broker's client as the broker. If a broker is an agent of the seller, then the subagent is also the seller's agent. When examining properties advertised through a multiple listing service it is important for buyers to determine whether the licensee that is showing them properties is acting in the capacity of a transaction broker, seller's agent or as a subagent of the seller.

Buyers should exercise care with respect to the information they reveal to licensees working as seller agents. For example, if you are the customer it would not be wise to tell a licensee the maximum price you would be willing to pay for a particular property when considering making a formal purchase offer. If you are the customer, the broker's primary responsibility is to the seller. In this case, the licensee, as the seller's agent, must convey such information to the seller.

A buyer's agent describes a real estate licensee who is employed by and represents only the buyer in a real estate transaction. This relationship is created by a written contract. This contract should clearly state the service the agent will perform for the buyer as well as specify how the licensee is paid for services rendered in connection with the real estate sale. In this case, the buyer is the client or principal and the real estate broker is the agent of and represents the buyer in dealings with sellers.

This type of real estate brokerage agreement should be used when the buyer needs guidance and representation when negotiating with sellers to purchase real estate. Buyers moving to a new location and who are unfamiliar with local market conditions would be those consumers most likely to

benefit from this type of agency arrangement. It is becoming increasingly common in multiple listing situations for the selling broker (a licensee working with and showing properties to the buyer) to be an agent of the buyer and the listing broker to represent the owner-seller. Here, both the buyer and seller, working through their respective agents, could negotiate at arm's length with the benefit of professional help.

Limited Consensual Dual Agent

Limited consensual dual agency is an agency relationship where the real estate brokerage company represents both the buyer and the seller in the same real estate transaction. Consensual dual agency requires the licensee to obtain the written consent of both the buyer and the seller to act as their agent. The two most common circumstances where dual agency is encountered are (1) when two or more salespersons licensed under the same broker each represent a different party to the transaction, and (2) when one licensee represents both the buyer and seller in the same sales transaction.

One major advantage of limited consensual dual agency is that it allows broader marketing opportunities than single agency arrangements. With this type of contract, salespeople can show houses of owners that they represent as agents to their buyer clients. Consensual dual agency is common in the larger real estate markets where real estate companies often have a large number of properties listed for sale. Many of these properties may be desirable to their buyers. With a dual agency agreement, these properties can be shown to their buyer clients.

In the case of dual agency, the principle function of the licensee is to help both parties reach mutually satisfactory outcome to their negotiations. The dual agent must avoid showing favoritism to either party and refrain from revealing confidential information that could prove detrimental to one side or the other. Although buyers and sellers may not benefit from the full range of services or agent loyalty that could otherwise be provided with a single agency arrangement, consensual dual agency does offer consumers more assistance and guidance than would be possible under a transaction brokerage arrangement.

When considering signing a dual agency agreement, it is very important that you talk with the broker to determine the types of services that will be provided, and what types of information you will share with the broker and broker's other clients.

Conclusion

After reading this consumer information booklet, you should sign a brokerage agreement that contains a statement of the services to be provided by the real estate professional. Remember, if you do not sign a brokerage agreement, by law, the licensee working with you will be considered a transaction broker. Ask your real estate licensee to clarify and explain anything in this booklet that you do not fully understand before signing a contract for real estate brokerage services. You are encouraged to sign the disclosure form and retain a copy for your records.

THIS IS FOR INFORMATION PURPOSES THIS IS NOT A CONTRACT

REAL ESTATE BROKERAGE SERVICES DISCLOSURE

*Alabama law requires you, the consumer, to be informed about the types of services which real estate licensees may perform. The purpose of this disclosure is to give you a summary of these services.

A SINGLE AGENT is a licensee who represents only one party in a sale. That is, a single agent represents his or her client. The client may be either the seller or the buyer. A single agent must be completely loyal and faithful to the client.

A SUBAGENT is another agent/licensee who also represents only one party in a sale. A subagent helps the agent represent the same client. The client may be either the seller or the buyer. A subagent must also be completely loyal and faithful to the client.

A LIMITED CONSENSUAL DUAL AGENT is a licensee for both the buyer and the seller. This may only be done with the written, informed consent of all parties. This type of agent must also be loyal and faithful to the client, except where the duties owed to the clients conflict with one another.

A TRANSACTION BROKER assists one or more parties, who are customers, in a sale. A transaction broker is not an agent and does not perform the same services as an agent.

*Alabama law imposes the following obligations on all real estate licensees to all parties, no matter their relationship:

1. To provide services honestly and in good faith;
2. To exercise reasonable care and skill;
3. To keep confidential any information gained in confidence, unless disclosure is required by law or duty to a client, the information becomes public knowledge, or disclosure is authorized in writing;
4. Present all written offers promptly to the seller;

5. Answer your questions completely and accurately. Further, even if you are working with a licensee who is not your agent, there are many things the licensee may do to assist you. Some examples are:

- 1. Provide information about properties;
- 2. Show properties;
- 3. Assist in making a written offer;
- 4. Provide information on financing. You should choose which type of service you want from a licensee and sign a brokerage service agreement. If you do not sign an agreement, by law the licensee working with you is a transaction broker. The licensee's broker is required by law to have on file an office policy describing the company's brokerage services. You should feel free to ask any questions you have. The Alabama Real Estate Commission requires the real estate licensee to sign, date, and provide you a copy of this form. Your signature is not required by law or rule but would be appreciated.

Name of licensee _____ . Signature
 _____ . Date

Consumer name _____ :
 Signature _____ :

 (Acknowledgement for Receipt Purposes, Only) Date

Author: Alabama Real Estate Commission
Statutory Authority: Code of Ala. 1975, §§34-27-8, 34-27-82, 34-27-87.
History: New Rule: Filed January 25, 1996; effective February 29, 1996. **Amended:** Filed August 3, 1998; effective September 7, 1998. **Amended:** Filed February 27, 2002; effective April 3, 2002.
Amended: Filed November 26, 2002; effective December 31, 2002.

790-X-3-.14 Agency/Brokerage Office Policy.

(1) The Real Estate Consumers Agency and Disclosure Act (RECAD) requires the qualifying broker to adopt and maintain an agency disclosure office policy which sets out the types of brokerage services which his or her company and licensees may offer or accept. The purpose of this rule is to specify the form and content of the office policy. Any format for the office policy is acceptable, including the use of devices such as loose-leaf ring notebooks.

(2) The qualifying broker shall provide all of his or her licensees with a copy of the office policy. The qualifying broker shall explain the office policy to all of his or her licensees at least once a year.

(3) The qualifying broker shall have all of his or her licensees sign a form which acknowledges that he or she has received a copy and a satisfactory explanation of the contents of the office policy.

(4) Under RECAD a qualifying broker may choose to offer the following services to the public: single agency, subagency, limited consensual dual agency, and transaction brokerage. Under RECAD a qualifying broker is not limited to offering only one of these services and is not required to offer all of these services.

(a) A single agent is engaged by and represents only one party in a real estate transaction. Buyers' agents and sellers' agents are examples of single agents. A written agency agreement with the client is required for a qualifying broker and his or her licensees to become a single agent. All qualifying brokers who offer single agency shall include a copy of their agency agreement form(s) in their office policy.

(b) A subagent acts for and helps another broker in performing brokerage services for a client. A subagent owes the same duties to the client (also called the principal) which the agent owes to the client. A written agency agreement with the client's qualifying broker is required for a qualifying broker and his or her licensees to become a subagent. All qualifying brokers who offer subagency shall obtain written permission from their client to do so and shall include a copy of their subagency agreement form(s) in their office policy.

(c) A limited consensual dual agent is an agent for both the buyer and the seller. A limited consensual dual agent represents more than one client in a transaction and owes the duties of agents set out in RECAD, except where the duties to one client will violate the duties owed to other clients. A written agreement is required for a qualifying broker and his or her licensees to become a limited consensual dual agent. All qualifying brokers who offer limited consensual dual agency shall include their limited consensual dual agency agreement form(s) in their office policy.

(d) A transaction broker assists one or more parties without being an agent or fiduciary or advocate for that party. A transaction broker may provide brokerage services to consumers or customers with or without a written agreement. All qualifying brokers who offer transaction broker services by written agreement shall include their transaction brokerage agreement form(s) in their office policy.

(5) All qualifying brokers shall include in their office policy a copy of the disclosure form required by Alabama Real Estate Commission Rule 790-X-3-.13. Further, all qualifying brokers shall include a copy of their sales contract forms containing the agency disclosure required to be in each offer to purchase by Section 34-27-8 Code of Ala. 1975, as amended.

Author: Alabama Real Estate Commission

Statutory Authority: Code of Ala. 1975, §§34-27-83, 34-27-87.

History: New Rule: Filed January 25, 1996; effective February 29, 1996. **Amended:** Filed August 3, 1998; effective September 7, 1998.

790-X-3-.15 Broker Supervision.

Failure of a qualifying broker to properly supervise his/her company or those licensed under him/her shall include, but is not limited to, the following:

(1) Failing to maintain an active broker's license with the Commission and thereby compromising the licensing status of those licensed under the qualifying broker.

(2) Allowing a person not licensed by the commission to engage in activities requiring a license on behalf of the qualifying broker or company.

(3) Allowing a licensee to conduct licensed activity for a company under which the licensee is not licensed.

(4) Allowing a person to engage in activities requiring an active real estate license while that person's license is expired, inactive, pending transfer, suspended, or revoked.

(5) Failing to take action to ensure that a licensee complies with any restrictions or conditions placed upon that person's license.

(6) Directing or instructing a licensee to take any action in violation of state, federal, or local laws or regulations while conducting licensed activity.

(7) Failing to take action to prevent a new or existing licensee from violating state, federal, local or license law while conducting licensed activity, if the supervising broker or branch broker has actual knowledge or should reasonably have actual knowledge of the impending violation.

(8) Failing to timely take action to correct or mitigate a violation of license law or regulation after learning of the violation.

(9) Failing to ensure that all contracts and forms used by the licensee are reviewed for accuracy and compliance with applicable statutes, regulations, and office policies.

(10) Failing to ensure that all licensees can maintain reasonable and timely communication with the supervising broker, branch broker, or a competent designee.

(11) Failing to oversee and account for the proper handling of funds or property of others by the company or its licensees.

(12) Failing to ensure that the company's advertisements or its licensee's advertisements conform with license laws and regulations.

(13) Failing to provide an orientation for licensees newly affiliated with the company.

Author: Alabama Real Estate Commission

Statutory Authority: Code of Ala. 1975, §§34-27-8.1, 34-27-32, 34-27-34, 34-27-36.

History: New Rule: Published January 31, 2022; effective March 17, 2022.