

Risk Management for Brokers

DETAILED CONTENT OUTLINE

Introduction

You, the broker, are the key to managing risks in your office, branch, or company. If you are the qualifying broker, the burden is even greater in practicing risk management. This course consists of two major sections – *Managing Money* and *Managing People*. *Managing Money* has two parts – Trust Funds and Auditing Procedures. *Managing People* deals with the training and supervision of the licensees under you. Even though some of the material does not directly refer to specific risk management issues, it is the opinion of the Alabama Real Estate Commission that a higher level of professionalism demonstrated by all licensees in a company is a significant solution to risk management problems. You are the key to raising and maintaining that higher level of expertise. This course is for you.

MANAGING MONEY (90 Minutes)

TRUST FUNDS

Intended Learning Outcomes

- Define trust funds
- Identify the types of money held in trust
- Express the need for accountability/recordkeeping
- Describe the need for trust fund maintenance
- Identify the violations
- State the penalties for mismanagement of money

Vocabulary

Disbursement	Security deposits
Earnest money	Trust funds
Maintenance reserves	Violations
Rent	Penalties

Outline

I. Trust Funds

A. Trust fund management

1. Earnest money
2. Property management fund management

3. Contract provisions

B. Disbursement and transfers [§34-27-36 and Rule 790-X-3-.03]

1. When and to whom
2. Written agreements
3. Legal situations – when the court gets it
4. Qualifying broker replacement
5. No expense usage

C. Violations [§34-27-36 and Rule 790-X-3-.03]

1. Commingling/conversion of funds
2. Using trust funds for transaction expenses
3. Failure to remit funds in a timely manner
4. Using trust money to offset account receivables
5. Using trust money to offset rental expenses from other rental accounts
6. Failure to deposit funds in a timely manner
7. Failure to deposit cash immediately
8. Failure to keep accounting records and other documents for 3 years
9. Failure to have signature authority on trust accounts for deposits and withdrawals
10. Failure to disburse funds within 7 days of the consummated transaction

D. Disciplinary Action

1. Penalties [§34-27-36]
 - a. Fine up to \$2500
 - b. Reprimand
 - c. Suspension/Revocation of license
 - d. Completion of continuing education course(s)
2. Hearings [§34-27-37]
3. Appeals [§34-27-38]

AUDITING PROCEDURES

Intended Learning Outcomes

- Describe the various business accounts for an agency
- State the reconciliation requirements for trust funds
- Describe the financial record retention process
- Describe the audit process

Vocabulary

Audit

Commingling

Earnest money

Financial record retention

Office policy and procedures

Record keeping

Rental security deposit fund

Security deposit

Trust accounts

Outline

II. Auditing Procedures

A. Types of accounts

1. All trust accounts
 - a. Earnest money
 - b. Security deposits
 - c. Rental receipts
 - d. Other
2. Operating account
3. Payroll account

B. Reconciliation

1. Ongoing financial reviews by qualifying broker
2. Process reconciliation monthly
3. Commission payments
4. Excess trust monies
5. Ledgers and logs
6. Retention period

C. Records Retention [§34-27-36]

1. Content
2. Retention time
3. Disposal of information

D. Auditing Preparation

1. Review rules in Alabama License Law
 - i. 34-27-36(a)(28), (29), (31)
 - ii. 790-X-3-.09
 1. Real estate licenses
 2. RECAD office policy
 3. Files for closed transactions
 4. All pending sales files
 5. Property management contracts, lease agreements, & rental records
 6. Trust and escrow account bank statements for the past six months
 7. Trust and escrow account bank reconciliation copies
 8. Checkbook/electronic records of check registers for escrow/trust accounts
 9. Duplicate deposit tickets with validated bank receipts for escrow/trust accounts
 10. Any lists, ledgers or records documenting funds held in escrow accounts
2. Failed offers [34-27-36(a)(31)]
3. Office Audit Checklist located on the Commission Website in the Forms area
4. Questions for the auditor

MANAGING PEOPLE TRAINING & SUPERVISION (90 Minutes)

Intended Learning Outcomes

- Develop strategies to adequately train and supervise employee and licensee activities
- Implement systems for documenting compliance with policies and procedures
- Recognize and avoid illegal and unethical practices
- Develop system for disseminating information on new and changed requirements in real estate laws and other regulations

Vocabulary

Training
Managing
Policies and procedures
Qualifying broker
Vicarious liability

Outline

III. Training & Supervision

A. Law and company policies

1. Brief review of License Law, Fair Housing, ADA, RESPA, anti-trust, environmental laws
2. Advertising
3. Employment laws
4. Other laws
5. Company policies
 - a. Developed from the laws above
 - b. Additional policies – harassment, automobile insurance, E & O coverage, agent-owned rental property, buying & selling of agent-owned or family-owned properties, Do Not Call, CAN-SPAM, etc.

B. Training licensees to have complete transaction files

1. AREC office audit/inspection requirements
2. Legal issues/lawsuits
3. Relocation services
4. Short sales and foreclosures
5. E & O insurance claim documentation

C. Responsibilities of a Qualifying Broker

1. Alabama License Law [§34-27-2(a)(12) and §34-27-34(a)(2)(3)]
2. Schedule and routine of broker
3. Determination of optimum broker/licensee ratio
 - a. New licensees vs. experienced
 - b. Full time vs. dual career
4. Selling vs. non-selling brokers
5. Broker continuing education and professional development

D. Strategies for supervising licensee and non-licensee/employee activities

1. Review and obtain signatures on policies and procedures
2. Review all contracts, leases, and brokerage agreements
3. Review all closed transaction folders for compliance

4. Review copies of advertising for compliance
5. Monitor websites, social media posts, and other technology for compliance
6. Maintain records of attendance at sales meetings
7. Maintain records of attendance at training sessions
8. Maintain copies of all licensee-owned transactions
9. "Management by walking around"
10. Virtual management

E. Law requirements

1. Real Estate Commission
RECAD [§34-27-83 and Rule 790-X-3-.14]
2. Local, state, and federal laws
 - a. Fair Housing
 - b. Anti-trust
 - c. ADA
 - d. Lead-based paint
 - e. HOA (Homeowners Associations)
 - a. Homeowners' Association documents filed with the Alabama Secretary of State
 - b. Do not interpret the Homeowners' Association law to clients/customers
 - c. Homeowners' Association must make specific information known to any member or potential purchaser/renter

F. Discretionary company policies

1. Office policy manual
2. Risk issues
 - a. Agency
 - b. Licensee Safety
 - c. E&O insurance
 - d. Auto insurance
 - e. Licensee owner income property
 - f. Cell phones
 - g. Social networking/Internet marketing
 - h. Multiple offers
 - i. Changing agency procedures
 - j. Agents conflict resolution
 - k. Sexual harassment
 - l. Company email and computers
 - m. Personal assistants
 - n. Drug and alcohol policy
 - o. Emergency preparedness

- p. Security
 - q. Conflicts of interest
 - r. Personnel files, office files, and confidentiality
 - s. Environment
 - t. HOA (Homeowners Associations)
3. Advertising/Marketing/Social Networking/Technology
- a. License Law requirements [§34-27-36(a)(5)(6)(9)(15)]
 - b. Fair Housing and HUD Guidelines
 - c. Internet/Social Networking/Technology
 - d. Do Not Call/Fax/Email/CAN-SPAM
 - e. Truth in Lending (Regulation Z)

Websites and Resources for Reference

- **Website:** www.arec.alabama.gov (**Alabama Real Estate Commission**)
- **Website:** www.hud.gov/offices/hsg/rmra/res/respa_hm.cfm (**RESPA**)
- **Website:** www.hud.gov/offices/fheo/FHLaws/index.cfm (**Fair Housing/ADA**)
- **Website:** www.epa.gov/lead (**Lead-Based Paint**)
- **Website:** www.hud.gov/offices/fheo/library/part109.pdf (**Part 109--Fair Housing Advertising**)
- **Website:** www.justice.gov (U.S. Department of Justice)
- **Website:** www.fcc.gov/cgb/policy/telemarketing.html
Summary of Telephone Consumer Protection Act 47 U.S.C. §227
Summary of Federal Communications Commission Telemarketing Rules: Part 64
- **Website:** www.fcc.gov/cgb/policy/faxadvertising.html (**Fax Advertising: What You Need to Know**)
- **Website:** <http://business.ftc.gov/documents/bus61-can-spam-act-compliance-guide-business>
The CAN-SPAM Act: A Compliance Guide for Business
- **Website:** www.fcc.gov/consumers/guides/stop-unwanted-calls-texts-and-faxes
- **Website:** www.sos.alabama.gov (HOA information)
- **Website:** www.consumerfinance.gov (CFPB)
- **Resource:** **Alabama License Law**
§34-27-36, §34-27-37, §34-27-38, and Rules 790-X-3-.03, 3-.04, 3-.07, 3-.09, 3-.10, and 3-.11

