

Risk Management for Salespersons

DETAILED CONTENT OUTLINE

Introduction

Besides the topics studied in the required course, “Risk Management: Avoiding Violations” – Alabama License Law and Property Conditions and Disclosure – the salesperson must also be knowledgeable in the areas of Agency and Sales Contracts in practicing effective risk management. This course examines those topics and more from a risk management perspective. A working knowledge of the two courses, combined with an innate desire to do what is proper and right, will guide the salesperson through a career of trouble free sales and leasing.

I. Agency (60 Minutes)

Intended Learning Outcomes

- List and describe the roles a licensee may perform in Alabama
- List and describe the obligations a licensee has to all parties
- List and describe the fiduciary duties an agent owes his/her client
- Explain the provisions of the Real Estate Consumer's Agency and Disclosure Act (RECAD)
- Describe some common misunderstandings related to RECAD

Vocabulary

Fiduciary duties
Limited Consensual Dual Agency
Single agent
Subagent
Transaction broker

Outline

A. Roles of licensee [§34-27-81 and Rule 790-X-3-.13]

1. Single agent
2. Limited consensual dual agent
3. Transaction broker
4. Sub-agent

B. Obligations of licensees to all parties [§34-27-84]

1. Act honestly and in good faith
2. Exercise reasonable skill and care

3. Keep information confidential unless disclosure is required
4. Account for all property
5. Present all written offers in a timely manner
6. Provide prior, timely, written disclosure of personal interests and relationships

C. Fiduciary duties owed to client [§34-27-84 and §34-27-85]

1. Obedience
2. Loyalty
3. Disclosure
4. Confidentiality
5. Accounting
6. Reasonable skill and care

D. RECAD

1. Definition [Rule 790-X-3-.13]
2. Minimum Services [§34-27-84(c)]
3. Myths/Misconceptions/Misunderstandings
 - a. Commercial Property [§34-27-82(a) (c)]
 - b. FSBO (For Sale By Owner)
4. Other risk management concerns with RECAD
 - a. All agency relationships must be in writing.
 - b. An agency relationship cannot be implied or assumed.
 - c. Without a signed brokerage agreement, the transaction broker relationship remains in effect.
 - d. All real estate brokerage firms must use the same agency disclosure forms provided by the Alabama Real Estate Commission.
 - e. Every real estate company must have a written agency disclosure office policy.
 - f. Licensees have the duty to disclose, but do not have an affirmative duty to discover [§34-27-85 (a) (2)]
 - g. A licensee is not liable for providing false information if the false information was provided to the licensee by a client, customer, or another licensee, UNLESS the licensee knows or should have known that the information was false [§34-27-86 (b)]

II. Contracts (90 Minutes)

Intended Learning Outcomes

- Identify the various types of contracts
- Identify specific license law requirements as they pertain to contracts
- Identify the required elements of a contract
- Describe issues in contract clauses

- Describe some *do's* and *don'ts* related to contracts
- Explain how to handle some specific situations related to contracts

Vocabulary

Consideration

Contingency contract

Contract

Meeting of the minds

Statute of frauds

Unauthorized practice of law

e-Contracts

Earnest Money

Outline

A. Types of Contracts

Listing agreements

1. Sales contracts
2. Agency agreements
3. Leases
4. Property management agreements
5. Others

B. License Law and Contracts

1. §34-27-36 (10)
2. §34-27-36 (25)
3. §34-27-84 (a)(5)

C. Elements of a contract

1. Legal objective
2. Legally competent parties
 - a. Mental capacity
 - b. Legal age
 - c. Authority to act
 - d. Without duress
3. Offer, acceptance, and delivery
4. Consideration
5. Written and signed

D. Clauses in a Sales Contract

1. Earnest Money [§34-27-36(a) (8)]
2. Possession and closing date

3. Seller's Disclosure
 - a. Required by Alabama law?
 - b. Part of a contract?
4. Working Condition
5. Financing
6. Contingencies
7. Personal vs. Real Property
8. Land Surveys
 - a. New or existing?
 - b. Who should pay?
9. Flood Elevation Survey

E. Sales contract do's and don'ts

1. Do's
 - a. Do put offers and counteroffers in writing
 - b. Do use pre-printed standard contract forms
 - c. Do write the contract exactly as the consumer instructs
 - d. Do be specific and clear as to the items in the contract
 - e. Do ensure the sales contract spells out the entire agreement between the parties
 - f. Do have consumer read and review the contract before signing
2. Don'ts
 - a. Don't make offers and counteroffers verbally
 - b. Don't alter pre-printed words on a standard contract form without broker consent
 - c. Don't include anything in a contract without the consumer's approval
 - d. Don't sign or initial a contract for a consumer without written authority to do so
 - e. Don't speak or make decisions for the consumer on any contract issue without speaking with the consumer first
 - f. Don't leave blanks or use "TBD" (To Be Determined)
 - g. Don't use abbreviations
 - h. Don't rely on any statement in the MLS (Multiple Listing Service) unless it appears in the contract

F. Handling specific contract situations

1. Offers/Counteroffers to finalized contract
2. Withholding offers
3. Deadlines
4. Notification
6. Contingency contracts

7. Earnest Money vs. Deposit
8. Multiple offers
9. Back up offers
10. Short sales
11. Foreclosures
12. Electronic submissions
 - a. HUD/HUDHomestore.com
 - b. Fannie Mae/HomePath.com
 - c. Auction sites
 - d. Others

III. Licensees as principals (25 Minutes)

Intended Learning Outcomes

- Describe the procedures a licensee must follow when selling, buying, or renting property in which he/she has ownership interest directly or indirectly

Outline

A. Licensees selling their own property

1. Disclosures and advertising
2. Handling funds

B. Licensees buying their own property

1. Buying your own company's listing vs. another company's listing
2. Buying a FSBO (For Sale By Owner) property
3. Disclosures and advertising
4. Handling funds

C. Licensees renting their own property

1. Disclosures and advertising
2. Handling funds

IV. Conclusion (5 Minutes)

Keys to effective risk management

1. Know and obey the laws.
2. When in doubt, defer to your qualifying broker.
3. Know and practice RECAD.
4. Know and practice the fiduciary duties.
5. Know the difference between duties to clients as opposed to obligations to all parties.
6. Always be honest and truthful. Never lie or mislead.
7. If you assume the duty, you assume the liability.
8. Stay within your own area of expertise and training.
9. Disclose personal interests and relationships in writing.
10. When in doubt, disclose.

11. "I don't know" is a good answer when you do not know.
12. Know the consumer's intentions and desires before you speak or act.
13. Reduce all agreements and understandings to writing.
14. Poor communication is the source of most problems.
15. Handle all problems earlier rather than later.
16. Document and create a paper trail.
17. Know your role as a principal in a real estate transaction.
18. Be a professional...grow in professionalism.

Supplemental Content

Current Issues

This section allows the instructor to address, if needed, any important current issue (i.e., "hot topic") related to risk management.

