

# Mandatory Broker CE Course

## I. Qualifying Broker Legal Responsibilities

### Intended Learning Outcomes

After completion of this section, the student will be able to:

- Summarize the supervisory responsibilities of a qualifying broker
- Explain proper use of various forms of marketing and advertising
- Demonstrate the proper handling of earnest money
- Explain the proper practice of property management
- Discuss the requirements for licensee-owned property

*Qualifying brokers must be knowledgeable in real estate License Law and regulation and understand that federal regulations may supersede Alabama law. The Commission's website homepage provides important information for all licensees.*

*All commercial transactions are subject to the same License Law requirements except for §34-27-82(d).*

- A. Supervision [§34-27-34(a)(1), (2), (3) and Rule 790-X-3-.15]
  1. Principle business must be a qualifying broker
    - a. Primary occupation
    - b. Supervise and be readily available to company licensees
  2. Supervise real estate activities of associate brokers and salespersons full-time
    - a. Technology is a tool...not a substitute for supervision
  3. Monitor all transactions for compliance with License Law
  4. Employee vs. Independent Contractor [§34-27-34(a)(3)]
    - a. Identify the differences between employees and independent contractors
  5. Agency disclosure office policy (RECAD) [Rule 790-X-3-.14 and §34-27-83]
    - a. Qualifying brokers may choose the services offered
    - b. Policy must be written and presented to the consumer [§34-27-82(c)]
    - c. Policy must be explained to licensees at least once a year
    - d. Policy must be acknowledged by the licensee signing a form
  6. Training of licensees
- B. Marketing and Advertising
  1. Develop written marketing policies and training to comply with License Law on all platforms and medias
  2. Signage
    - a. Written signage policy complies with License Law [§34-27-36(a)(6)]
    - b. Where and when signs can be used [§34-27-36(a)(9)]

- c. Know and teach local ordinances
  - 3. Social media
    - a. Various examples of social media
      - i. Facebook, Twitter, Instagram, Tik Tok, Snapchat, Reels, Stories, etc.
      - ii. Live and Posted
    - b. “A Reminder on Advertising Restrictions: Using Facebook and Twitter” article in the Summer 2017 Update newsletter
  - 4. Other public advertising
    - a. Websites
    - b. YouTube
    - c. Pictures and videos
    - d. Print media
    - e. Teams [*§34-27-39(e)*]
- C. Earnest Money
  - 1. Earnest money is “money belonging to others”.
    - a. Rule 790-X-3-.03(1) identifies “*...all funds belonging to or being held for others in a separate federally insured account or accounts in a financial institution located in Alabama...*”
    - b. The qualifying broker is responsible for “money belonging to others” coming into his/her possession or the possession of any licensee licensed under the qualifying broker
    - c. Earnest money held by third parties is not subject to Commission oversight and must be written in the contract
    - d. Confirm the deposit of funds and get a copy of the check or wire transfer confirmation
  - 2. Types of accounts:
    - a. Earnest money account (escrow account)
      - i. Earnest money being held by a real estate company must be held in a separate federally insured account or accounts in a financial institution located in the state of Alabama. [*§34-27-36(a)(8)* and *Rule 790-X-3-.03*]
      - ii. The qualifying broker must be a signatory on all earnest money accounts. [*Rule 790-X-3-.03(1)*]
      - iii. The qualifying broker is ultimately responsible for all accounts
        - Qualifying brokers are responsible for the deposit of all earnest money funds coming into their possession or that of their associate brokers or salespersons. [*Rule 790-X-3-.03(3)*]
      - iv. Cash must be deposited immediately [*Rule 790-X-3-.03(3)*]
      - v. Checks shall be deposited when the contract form states. If no time is specified, they shall be deposited when the offer becomes a contract. [*Rule 790-X-3-.03(3)*]
      - vi. Disbursement of earnest monies [*Rule 790-X-3-.03(5)*]

- If the contract is consummated, earnest monies shall be promptly disbursed to the appropriate party within seven (7) business days of the consummation of the transaction
  - If the transaction fails, and funds are held by a qualifying broker, funds can only be disbursed upon mutual written agreement of the parties or a court order. License Law does not specify a time frame.
  - If the transaction fails and the funds are held by a third party, they are not held to the requirements of License Law. Verify how the third party will handle earnest money in a failed transaction.
- b. Operating account
    - i. An operating account contains money for expenses incurred in carrying out an organization's day-to-day activities.
    - ii. Operating expenses include such things as payroll, sales commissions, employee benefits and pension contributions, transportation and travel, amortization and depreciation, rent, repairs, and taxes.
3. Earnest money best practices [*Rule 790-X-3-.03*]
    - a. Pros and cons of earnest money being held by a brokerage versus a third party.
    - b. Knowing the law and training licensees on proper handling of earnest money.
    - c. If held by a third party, get confirmation that earnest money has been deposited and get a copy of the check.

#### D. Property Management

1. Who needs to be licensed for property management? [*§34-27-2(b)(7)*]
2. Specific property management activities must be conducted through a licensed real estate company. [*Rule 790-X-1-.03(1)*]
3. A licensee, who holds a broker's license, must form his/her own real estate company for property management, which is licensed with the Alabama Real Estate Commission, if the company under which he/she is licensed does not offer property management.
4. Specific property management education is strongly recommended for any licensee or company engaging in property management

#### E. Licensee/immediate family member acquiring an interest in property [*34-27-84(a)(6)*]

1. Licensee ownership interest in real estate without compensation, and the transaction is not under his/her broker or company [*Rule 790-X-1-.03(2)(3)*]

## II. Best practices and implementation

### Intended Learning Outcomes

After completion of this section, the student will be able to:

- Explain the qualifying broker's responsibility for proper training for company licensees and staff

- Explain the qualifying broker’s responsibilities for proper record keeping and handling of company finances
- A. Training [*Rule 790-X-3-.15*]
1. Written on-boarding plan
    - a. Signed, written agreement between company and licensee
    - b. Team guidelines and policies
    - c. Safety policy
    - d. Proper use of technology
      - Company websites, electronic signature programs, customer relationship management (CRM) programs, etc.
      - Documentation of electronic communications (e.g., text, email)
      - Establish proper means of communication with qualifying broker or other licensees
  2. Permitted activities for licensed and unlicensed staff
    - “Unlicensed Assistants” under Briefly Legal on Commission website
  3. Creating an effective plan to actively supervise your agents
    - How often will you review contracts?
    - How often will you speak with licensees? What is important to discuss?
    - How often will you have team meetings and what should be covered?
    - How will you track required licensee personal development training?
    - How will you track licensee CE training?
    - How will you identify and address risky behavior?
- B. Accounting and Record Keeping
1. Develop & implement a self-auditing system
  2. Identify who has access to financial and transactional files
  3. Qualifying broker is STILL responsible.
  4. Office Audit Checklist