

Risk Management: From Signed to Sold

Student Outline

Introduction

This course will identify proper risk management from the time a real estate offer is accepted to the signing of closing documents. In addition, this course will discuss the importance of buyers and sellers having a full understanding of the complete real estate transaction.

Intended Learning Outcomes

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

- explain buyer/seller interviews and disclosures.
- identify acceptance of offers.
- compare various forms and the role of the licensee.
- discuss issues that may occur from accepted offer to closing.
- analyze what to do after the closing.

Anti-trust

Federal and state law prohibits competitors exchanging information that could restrain trade (i.e., rates, agreements to refuse to deal, market share distribution, company policies, etc.). Anti-trust law ensures real estate companies compete openly and independently, so consumers receive the benefit of fair pricing, choice, and services.

I. Buyer/seller interviews and disclosures.

Intended Learning Outcomes

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

- summarize RECAD requirements in Alabama License Law.
- describe the necessary actions when representing buyers and sellers.
- recall the obligations to all parties in a real estate transaction.
- identify possible antitrust violations.
- explain the required RECAD law regarding agency disclosure in the purchase agreement.

A. Reminder of RECAD requirements

1. Written disclosure for both buyers and sellers [**§34-27-82 and Rule 790-X-3-.13**]
 - a. Current Brokerage Services Disclosure form
 - b. Office policy
2. Written brokerage agreement

- B. Reminder of necessary actions when representing buyers and sellers
 - 1. Written agency agreement
 - 2. Fiduciary duties/responsibilities [**\$34-27-85**]
 - 3. Designated agency
 - 4. Dual agency
- C. Reminder of obligations to all parties in a real estate transaction [**\$34-27-84**]
 - 1. Act honestly
 - 2. Exercise reasonable skill and care
 - 3. Confidentiality
 - 4. Account for all property
 - 5. Assist in negotiation and present all written offers
 - 6. Copy of documents [**\$34-27-36(b)(10)**]
- D. Reminder of RECAD law regarding agency disclosure in the purchase agreement.

II. Acceptance of offers

Intended Learning Outcomes

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

- explain the offer and counter-offer process.
- explain the acceptance of offers.
- identify issues that occur while negotiating the purchase agreement.
- identify verbiage in the purchase agreement that creates a binding contract between buyers and sellers.

- A. License Law requires the presentation of all written offers [**\$34-27-84(a)(5)**]
 - 1. When the purchase agreement form is unfamiliar to the listing agent
 - 2. Presenting offers that are on a form other than the one the listing agent used
- B. When an offer is considered to be accepted
 - 1. Wording in the purchase agreement
 - 2. How and when it was communicated and the importance of timely communication
 - a. Text message
 - b. Email
 - c. Telephone call
 - d. All of the above
- C. Backup offers
 - 1. Time frame for inspections, mortgage applications, earnest money deposit, etc.
 - 2. Release from a backup offer
- D. Net sheets signed when an offer is presented to either party

III. Forms and the responsibilities of the licensee.

Intended Learning Outcomes

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

- identify the differences in various purchase agreement forms used.
- analyze problems when using a form less familiar to the licensee.
- discuss communicating differences in forms to customer/client when using a form less familiar to the licensee.

A. When an offer is considered to be accepted

1. Finalized date
2. When accepted and signed
3. Signed and notification delivered to both parties

B. Earnest Money.

1. License Law references [**§34-27-36(8)(a, b, c), Rule 790-X-1-.05, Rule 790-X-3-.03, Appendices A-3 and A-5**]
2. Understanding earnest money provisions in the contract
 - a. When earnest money will be given by the buyer
 - b. The party who will hold the earnest money. If not a real estate company, know the policy for releasing earnest money.
 - c. When earnest money will be deposited
 - Rule 790-X-3-.03
 - According to the terms of the contract
 - Confirmation of deposit
 - d. Timelines
 - e. Earnest money not received according to the purchase agreement

C. Licensees and their companies are not part of the contract between the buyer and seller

IV. From accepted offer to closing

Intended Learning Outcomes

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

- identify the possible contingencies in a purchase agreement.
- compare the clauses in various purchase agreements.
- analyze various areas to address between contract and closing.
- evaluate potential areas of risk between contract and closing.

A. Contingencies

1. Financing and TRID (TILA-RESPA Integrated Disclosure)
 - a. Pre-Approval vs. Pre-Qualification
 - b. Changes to financing requires a change to the purchase agreement
 - c. Mortgage fraud

2. Inspections and due diligence [**§34-27-36**]
 - a. Covered items according to the inspections and/or due diligence clauses
 - b. The right to have an inspection vs. waiving the right
 - c. General home inspection
 - d. Heat and air (HVAC)
 - e. Termites/Wood infestation report/Termite contracts
 - f. Surveys
 - g. Sewer/Septic system
 - h. Radon
 - i. Other inspections
 3. “As Is” properties
 - a. Caveat emptor
 - Exceptions
 - Health & safety
 - New construction
 - Direct inquiry
 4. Commercial vs. residential
 5. Contingent on sale of the buyer’s current property
 - a. First right of refusal, a.k.a. break clause
 - b. Close of sale versus accepted offer on the buyer’s property
- B. Repairs
1. Negotiation of unsatisfactory conditions based on inspection findings
- C. Other potential Issues
1. Taxes and assessments
 2. HOA (Homeowners Association)
 3. Closing date and possession
 4. Digital offers
 5. Inaccurate estimates of closing costs
- D. Changes to a contract after acceptance
1. Change in price
 2. Change in type of financing
 3. Change in closing date
 4. Other changes
- E. Insurance
1. Type of insurance
 - a. Homeowner
 - b. Flood
 2. When to apply for insurance
 3. Issues affecting insurance
 - a. CLUE report (Comprehensive Loss Underwriting Exchange)
 - b. Buyer’s credit
 - c. Named storms (i.e., tropical storms and hurricanes)
 - d. Coverage not available or current company not writing policies

- e. Cost (affecting loan qualifications)
 - f. Transfer of a current policy
- F. Title issues
 - 1. Do not attempt to be an attorney
 - a. How is the current title held?
 - b. Alabama Supreme Court Case regarding Tenants in Common
 - 2. Preliminary title
 - 3. Actual ownership of the property by the seller
 - 4. Buyer and/or seller currently in probate
 - 5. Life estates
 - 6. Divorce
 - 7. Real estate held in a trust
 - 8. Estate with passing
 - 9. Clearing title issues
- G. Settlement statements and/or closing disclosure
 - 1. RESPA (Real Estate Settlement Procedures Act)
 - 2. TRID (TILA-RESPA Integrated Disclosure) requirements
- H. Handling surprising issues
 - 1. Wire fraud
 - 2. Buyer and/or seller fraud
- I. Final walk-through
 - 1. Identify items that are covered and not covered
 - 2. Identify proper time for performance of a walk-through
 - 3. Governed by purchase agreement
- J. The closing
 - 1. Understanding of buyers that all concerns after closing belong to them
 - a. Seller obligations cease at closing unless otherwise agreed to in writing
 - b. Broker and licensee obligations cease at closing unless otherwise agreed to in writing
 - 2. Location of closing
 - 3. Parties who are able to choose the location
 - 4. Role of the licensee at the closing
 - 5. Qualifying broker responsibility
 - 6. Document retention
 - 7. Hold Harmless Agreements

V. After the Closing

Intended Learning Outcomes

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

- identify the documents License Law requires a broker to retain.
- discuss possible issues that can occur after closing.
- analyze how to handle post-closing issues.
- explain the importance of keeping the broker informed.
- identify potential violations regarding rebates and kickbacks.

A. Documents to be retained by the qualifying broker

1. License Law requirements **[A-2 – Audit Checklist]**
2. Broker requirements
 - a. Checklists for closing
 - b. Conflicts may arise between varying companies' requirements
 - Seller's disclosure
 - Final walk-through form

B. Possible issues

1. Title issues
2. Repaired items not working
3. The "Surprises"
 - a. Know what to say and what to do
 - b. Examples include fence problems and roof leaks

C. Keep the qualifying broker involved and informed.

1. Verification that closing requirements are satisfied.
2. Documents entered into the qualifying broker's system
3. Money handled properly
 - a. Earnest money
 - b. Repair money paid after closing
 - c. Commissions paid
 - d. Reimbursement for seller expenses outside of closing
 - e. Avoid rebates offered by service providers **[\$34-27-36(b)(12)]**