

# 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.*

*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. Principal business must be a qualifying broker.
    - a. Principal business.
    - 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.
    - 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, X (*formerly known as 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.
- 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. All 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 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. Safety policy.
  - c. 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.
  - Licenses.
  - RECAD Office Policy.
  - All pending sales files.
  - All contracts, leases, listings, and other records pertinent to real estate transactions must be kept for three years. This includes failed transactions and rejected offers. [§34-27-36(a)(31)]
  - Lease and management agreements or rent roll.
  - Copies of the past 6 months’ bank statements for all escrow and operating accounts.
  - Checkbook and/or computer printout of check register.
  - Bank validated deposit receipts.
  - Any lists or ledgers documenting funds held for escrow purposes.
  - Business signage. [§34-27-2(a)(11)]