

Risk Management: Initial Contact to Accepted Offer

Introduction

This course will identify proper risk management by associating Alabama License Law with the steps in a typical real estate transaction beginning with the initial meeting of consumers who are interested in buying or selling real estate and ending with the accepted offer. Licensees have many responsibilities identified in License Law. Possible violations include, but are not limited to, the following:

- Engaging in misrepresentation or fraudulent acts when selling, buying, trading, or renting real property. **[§34-27-36(a)(2)]**
 - *Disclosing Special Relationships* article in the Winter 2010 Update newsletter
- Failing to disclose (to the owner) the licensee's intention to acquire an interest in the property. **[§34-27-36(a)(18)]**
- Prior timely written disclosure of interest to all parties when acting on behalf of an immediate family member or any other individual, organization, or business entity in which they have a personal interest. **[§34-27-84(a)(6)]**

I. Meeting with the consumer

Intended Learning Outcomes

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

- Summarize the RECAD requirements identified in Alabama License Law
- Describe the necessary actions when working with a buyer
- Explain the illegal actions involved in taking a listing with a seller
- Practice proper advertising requirements when selling property
- Recall the obligations to all parties in a real estate transaction

A. Agency

1. Written disclosure for both buyers and sellers: what is presented, who it is presented to, and when it is presented **[§34-27-82]**
2. Real Estate Brokerage Services Disclosure form **[Rule 790-X-3-.13]** and obligations to all parties **[§34-27-84]**
3. Fiduciary responsibilities (example: OLDCAR) **[§34-27-85]**
4. Written agency agreement for the buyer or the seller
5. Confidentiality

6. Acting for more than one party without written consent of all parties **[\$34-27-36(a)(7)]**
7. Limited consensual dual agency
8. Consult with qualifying broker regarding company policy on agency

B. Buyers

1. Acting honestly, without negligence or incompetently and following License Law **[\$34-27-36(a)(26)(27)]**
 - a. Examples include selling property in Mobile even if you are in Huntsville; or selling commercial property when you only have experience in residential property; or claiming to be licensed with another company
 - b. Stay in communication with the buyer and everyone involved in the transaction
2. Furnishing a copy of all documents to each party **[\$34-27-36(a)(10)]**
 - a. Contracts, listings, leases, RECAD, estimate of closing costs, etc.
 - b. What is reasonable promptness? There is no specific time period associated with this. According to the Commission's Legal Division, this means doing something without delay.
 - c. Methods of providing documents
 - Electronic
 - Paper

C. Sellers – Taking a listing

1. Acting honestly **[\$34-27-36(a)(26)(27)]**
 - a. Material misrepresentation **[\$34-27-36(a)(3)]**
 - b. Required disclosures
 - Health & safety
 - Direct inquiry
 - Lead-based paint (Federal requirement)
2. Furnishing a copy of documents to each party **[\$34-27-36(a)(10)]**
3. Advertising **[\$34-27-36(a)(6) & (15)]**
 - a. What is considered an advertisement?
 - Advertising is everything you cause to be published for real estate purposes. This includes business cards, billboards, online posts, postcards, etc.
 - b. Types of advertising for individual licensees and teams
 - Print
 - Billboards/signs
 - Social media
 - Videos
 - Flyers

- Business cards
- c. Using good, true pictures of the property when advertising a listing
- d. Placing a sign on property **[\$34-37-36(a)(9)]**
 - A licensee must have the owner’s permission for a sign to be placed on property
 - Always check with the qualifying broker regarding company policy
 - Improperly placing any sign on property
- 4. Taking a net listing **[\$34-27-36(a)(20)]**
 - a. A net listing stipulates a net price to be received by the owner with any excess being received by the qualifying broker as commission
- 5. Fixed date on a listing **[\$34-27-36(a)(25) and Rule 790-X-3-.05]**
 - a. Written listing agreements must have a fixed date of expiration
 - b. Automatic extensions shall not be used in listing contracts
- 6. Minimum Services **[\$34-27-84(c)]**
 - a. Be careful with possible anti-trust violations
 - b. Accept delivery of all offers
 - c. Present all offers, counteroffers, and addenda to the consumer
 - d. Assist the consumer in negotiating offers and counteroffers
 - e. Answer all consumer questions relating to the transaction
 - f. *A Review of Minimum Services Requirements* article in the Winter 2016 Update newsletter

II. Presenting property to the consumer

Intended Learning Outcomes

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

- Summarize misrepresentation and Caveat Emptor
- Recall the exceptions to Caveat Emptor
- Explain property that is sold “as is”
- Give examples of the actions allowed for unlicensed people in the presentation of properties

A. Misrepresentation **[\$34-27-36(a)(3)(4)(5)]**

1. Buyer Beware – *Caveat Emptor*
 - a. The burden is on the buyer to be satisfied with all things regarding the property and the desirability to purchase it.
 - b. Exceptions
 - New construction
 - Health & safety
 - Direct inquiry

- Buyer agency may impact *Caveat Emptor*. Understand additional responsibilities as the agent of a buyer.
 - 2. “AS IS” property
 - a. *As Is: Little Words, Big Impact* article in the Spring 2008 Update newsletter
- B. Who can present property? **[§34-27-36(a)(17)]**
 1. What can unlicensed people do?
 2. Open houses

III. Filling out the offer to purchase form (35 minutes)

Intended Learning Outcomes

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

- Identify the agency disclosure clause in an offer to purchase
- Explain the proper handling of trust funds
- Practice proper document recordkeeping for successful and failed transactions
- Describe an estimate of closing costs when an offer is presented
- Explain immediate family transactions

- A. Broker responsibility **[§34-27-34 (a)(1), (2), (3) and Rule 790-X-3-.15]**
- B. Agency
 1. Agency Disclosure Clause **[§34-27-8(c)]**
 2. Required to be in each offer to purchase
- C. Trust Fund **[§34-27-36(a)(8)(a)(b)(c) and Rule 790-X-3-.03(2)]**
 1. When you get money, make sure it is turned over immediately upon receipt
 2. What does the contract say?
 3. Disposition in the event of a dispute
 4. Licensee must inform his/her qualifying broker when an offer is accepted
- D. Documents **[§34-27-36(a)(10)(31)]**
 1. All contracts, leases, listings, and other records must be kept on file for a period of three years
 - Other records can include an estimate of closing costs, RECAD, agency agreements and others
 2. AREC video on “Failed Transaction Files, Who Needs Them? You Do!”
- E. Lender **[§34-27-36(a)(21)]**
 1. In addition to License Law, licensees must follow RESPA, which is a federal law
- F. Estimate of Closing Costs **[§34-27-36(a)(22)]**
 1. Required when an offer is presented to a buyer or seller
 2. **Rule 790-X-3-.04**

- a. This is limited to family residential real estate and does not apply to commercial real estate, but a company may have a policy that requires it on all properties
 - b. Must be prepared at time of writing and/or presenting offers and counteroffers
 - c. A lender's loan estimate is not a substitute
- G. 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)**]

IV. Presenting the offer to the seller

Intended Learning Outcomes

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

- Recall the requirement to present all written offers
 - Describe an estimate of closing costs when offers and counteroffers are presented
- A. Obligation to present offers
 - 1. **§34-27-84(a)(5)**
 - 2. Discuss multiple offers and when to have this conversation with the buyer and the seller
 - 3. Present all written offers and let the seller make the decision on how to proceed
 - B. Estimate of Closing Costs
 - 1. **§34-27-36(a)(22)**
 - 2. **Rule 790-X-3-.04**
 - C. Communication of accepted offer
 - 1. What does the contract say?
 - 2. Use multiple forms of communication such as email documents, texts, and phone calls

V. Accepted offer

Intended Learning Outcomes

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

- Summarize broker responsibilities
- Explain the proper use of trust funds
- Recognize the violation of breaking a contract
- Recognize the requirements associated with keeping records

- A. Broker responsibility
 - 1. **§34-27-34 (a)(1), (2), (3) and Rule 790-X-3-.15**
- B. Trust funds
 - 1. **§34-27-36(a)(8)**
 - 2. **Rule 790-X-3-.03(1)(3)(4)(5)(6)**
 - 3. Commingling and conversion
- C. Inducing a party to break a contract
 - 1. **§34-27-36(a)(13)**
- D. Record retention
 - 1. **§34-27-36(a)(31)**
 - 2. Both executed and failed transaction records must be retained
- E. Honesty and competence
 - 1. **§34-27-36(a)(26)(27)**
 - 2. Reminder of Section 1 (Responsibilities)

VI. Conclusion

- A. A qualifying broker has many responsibilities regarding the real estate company and all individuals either employed or licensed with the company.
- B. Please refer to your qualifying broker if you have additional questions
- C. Responsibilities include the following as identified in §34-27-34 (a)(1), (2), and (3):
 - 1. Actual full-time supervision of the real estate activities of the associate brokers and salespersons licensed with the company
 - a. A qualifying broker must be aware of all real estate activities of company licensees.
 - b. Review RECAD company policy with licensees annually and have them acknowledge it
 - 2. See that all company licensees and their transactions comply with License Law
 - a. Document review required by License Law
 - b. Document review required by company policy (i.e. seller disclosure, walk-thru, etc.)
 - c. Document retention
 - 3. Be responsible to an injured party for the damage caused by any violation of License Law by an associate broker or salesperson licensed with his/her company