

Chapter 400: AGENCY/DESIGNATED BROKER RESPONSIBILITIES

Summary: This chapter details requirements of maintaining a real estate brokerage agency and establishes the specific supervisory responsibilities of the designated broker.

1. Responsibilities of Designated Broker

1. Generally

The designated broker shall supervise the activities of affiliated licensees, the activities of unlicensed persons affiliated with the real estate brokerage agency and the operation of the real estate brokerage agency. The supervision includes, at a minimum, the establishment of policies and procedures that enable the designated broker to review, manage and oversee the following:

- A. The real estate transactions performed by an affiliated licensee;
- B. Documents that may have a material effect upon the rights or obligations of a party to a real estate transaction;
- C. The filing, storage and maintenance of such documents;
- D. The handling of money received by the real estate brokerage agency for the parties to a real estate transaction;
- E. The advertising of any service for which a real estate license is required;
- F. The familiarization by the affiliated licensee with the requirements of federal and state law governing real estate transactions; and
- G. The dissemination, in a timely manner, to affiliated licensees of all regulatory information received by the real estate brokerage agency pertaining to the practice of real estate brokerage.
- H. The registration of any domain name for a web site in order to promote real estate brokerage services or the sale or purchase of real estate through the agency; and
- I. The development or uploading to the internet of a web site that promotes real estate brokerage services or the sale or purchase of real estate through the agency.

2. Monitoring Compliance

The designated broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems, that includes regular meetings with affiliated licensees, company policy manuals, training programs and materials and availability of designated broker to assist and advise.

3. Delegation

The designated broker may designate another person to assist in administering the provisions of the Commission's rules. However, the designated broker does not relinquish overall responsibility for the supervision of affiliated licensees and unlicensed persons affiliated with the real estate brokerage agency.

4. Company Policy

The designated broker shall have a written company policy that identifies and describes the types of real estate brokerage relationships in which the real estate brokerage agency may engage. In addition, the company policy must also include the procedures intended to prevent any mishandling of information through both formal and informal sharing of information within the real estate brokerage agency, the arrangement of agency office space and the personal relationships of affiliated licensees who are representing buyers and sellers with adverse interests.

5. Review of Sales Agent Documents

The designated broker, at a minimum, shall review and initial, as soon as possible, all contracts, property data sheets, disclosure forms, market analyses and other relevant information prepared by a sales agent for buyers and sellers during the first 90 days of the licensing of the sales agent with the real estate brokerage agency. The requirements of this Section are not intended to affect the validity of a contract.

2. Real Estate Trust Accounts

1. Definition of "Earnest Money Deposit"

As used in this Section, the term "earnest money deposit" includes earnest money deposits and all other money held by the real estate brokerage agency for clients or other persons for purposes related to a real estate brokerage transaction.

2. Various Forms of Real Estate Trust Accounts

A real estate trust account shall be in the form of a checking or savings account and may accrue interest on an earnest money deposit provided that the accumulated interest is properly disbursed. If the parties to the transaction agree to place the earnest money deposit in something other than a real estate trust account, the real estate brokerage agency shall not hold the funds or act as trustee.

3. Opening a Real Estate Trust Account

The real estate trust account checks and bank statements must contain the real estate brokerage agency's trade name as licensed by the commission and must be imprinted with the words "real estate trust account."

4. Making Earnest Money Deposits

An earnest money deposit received by a designated broker, as trustee, shall be deposited within 5 business days of acceptance of the offer. Other earnest money deposits received by the trustee shall be deposited within 5 business days of the trustee's receipt of such earnest money deposits.

5. Restrictions on Earnest Money Deposits in Real Estate Trust Accounts

A designated broker shall not commingle the earnest money deposit of buyers or sellers in a real estate transaction with:

- A. Funds belonging to the real estate brokerage agency. This provision shall not be construed to limit deposits made by the real estate brokerage agency of an amount sufficient to maintain the account, but such amount shall not exceed \$500; or
- B. Funds held for persons that do not involve the sale, purchase or exchange of real estate.

An earnest money deposit shall not be utilized prior to a closing for selling or buying expenses such as a title fee, survey, etc., unless agreed to in writing by all parties in the transaction. There shall be a proper accounting for all monies held by the real estate brokerage agency and any remittance shall be made within a reasonable time, but not more than 30 days, after the conclusion of the transaction.

6. Maintaining Real Estate Trust Account Records

The designated broker shall maintain records and supporting documents sufficient to verify the adequacy and proper use of the real estate trust account. The records and supporting documents shall be maintained for a period of at least 3 years after the date set forth in Section 7(G) of this chapter.

7. Information Included in Minimum Real Estate Trust Account Records

Minimum real estate trust account records shall include a ledger or journal which records in chronological order all receipts and disbursements of funds in the real estate trust account and provides the following information:

- A. The date the earnest money deposit is received by the real estate brokerage agency;
- B. The date the earnest money deposit is received by the banking institution;

- C. The purpose of the earnest money deposit and from whom received;
- D. The purpose of the withdrawal and to whom paid;
- E. The amount of the earnest money deposit;
- F. The current running balance of funds held by the real estate brokerage agency; and
- G. The closing date of a transaction, if any, or the date the earnest money deposit was disbursed.

8. Real Estate Trust Account Supporting Documents

Real estate trust account supporting documents shall include:

- A. Bank statements;
- B. Canceled checks;
- C. Copies of contracts;
- D. Closing statements, if available;
- E. Correspondence; and
- F. Additional items necessary to verify and explain record entries.

9. Disbursement of Undisputed Earnest Money Deposits Held in Trust

Disbursement of an undisputed earnest money deposit may occur by one of the two following procedures:

- A. Authorization, in writing, from the parties to a real estate brokerage transaction agreeing to the disbursement; or
- B. Authorization by the designated broker who, in reasonable reliance on the terms of the purchase and sale agreement or other written documents signed by both parties, determines the appropriate disbursement of the undisputed earnest money deposit. The designated broker may, at the designated broker's own discretion, make such disbursement to release the undisputed earnest money deposit no sooner than 5 business days after notifying both parties of the designated broker's proposed decision to release the undisputed earnest money deposit. The earnest money deposit shall not be disbursed under this Section if prior to disbursement the designated broker receives actual knowledge of a dispute as provided in Section 2(10) of this chapter.

10. Disputed Earnest Money

- A. Any time that more than one party to a transaction makes demand on the earnest money deposit for which the real estate brokerage agency is acting as trustee, the designated broker shall:
- (1) Notify each party, in writing, of the demand of the other party; and
 - (2) Keep all parties to the transaction informed of any actions by the designated broker regarding the disputed earnest money deposit, including retention of the earnest money deposit by the designated broker until receipt of written release from both parties agreeing to the disposition of the earnest money deposit or agreeing that the dispute has been properly resolved.
- B. After notice as provided in Section 2(10)(A)(1) of this chapter, the designated broker may reasonably rely on the terms of the purchase and sale agreement or other written documents signed by both parties to determine the disposition of the disputed earnest money deposit and may, at the designated broker's own discretion, make such disbursement no sooner than 5 business days after notifying both parties of the designated broker's proposed disbursement of the earnest money deposit. This discretionary disbursement by the designated broker is not a violation of license law, but may not relieve the designated broker of civil liability.
- C. The designated broker may hold the earnest money deposit until ordered by a court of proper jurisdiction or agreement of the parties to make a disbursement. The designated broker shall give all parties written notice of any decision to hold the earnest money deposit pending a court judgment or agreement of the parties for disbursement.
- D. Absent written authorization from the party to be charged, the designated broker is not entitled to withhold any portion of the earnest money deposit when a real estate transaction fails to close even if a commission is earned. The earnest money deposit must be disposed of as provided by Section 2(10) of this chapter.

3. Record Retention Schedules; Format

1. Generally

All real estate brokerage records, including real estate trust account and supporting records, transaction files, and other brokerage-related records, are to be under the control of the designated broker and made available to the director upon request. **Except for rejected offers and counteroffers, which must be kept for one year from the date of the rejected offer or counteroffer, the following records must be kept by the designated broker for 3 calendar years after all funds held by the designated broker in connection with a transaction have been disbursed to the proper party or until the conclusion of the transaction, whichever last occurs:**

- A. The original or a true copy of all purchase and sale contracts;**

- B. Listing or buyer brokerage representation agreements, appointed agent consent forms, disclosed dual agent consent forms and the Real Estate Relationships Form required under Chapter 410, Section 9 of the Commission's rules;
 - C. Property disclosure forms, data sheets and other property information prepared by the real estate brokerage agency or one of its affiliated licensees to promote property for sale or purchase;
 - D. Real Estate Trust Account ledger records, as listed in Section 2(7) of this chapter; and
 - E. Real Estate Trust Account reconciliation records, as listed in Section 2(8) of this chapter.
2. Electronic Format

Real estate brokerage records may be maintained in electronic format, as defined by 10 MRSA Chapter 1051. An electronic record means a record generated, communicated, received or stored by electronic means. Such electronic records must be in a format that has the continued capability to be retrieved and legibly printed. Upon request of the director, printed records shall be produced.

4. Examinations for Compliance with Licensing Laws

A real estate brokerage office may be examined for compliance with licensing laws once each licensing period, as necessary as part of an investigation of a complaint filed with the director or may be examined upon receipt of prima facie evidence indicating improper use of a real estate trust account. The designated broker shall produce for inspection by an authorized representative of the Commission any document or record reasonably necessary for investigation or audit in the enforcement of 32 MRSA Chapter 114 and in enforcement of the rules promulgated by the Commission. Failure to submit such documents or records as requested by the director shall be grounds for disciplinary action. The examiner shall notify the agency of the results of such office examination and may file a complaint.

STATUTORY AUTHORITY: 32 MRSA §§ 13065(7), 13184

EFFECTIVE DATE:

July 1, 2006 – filing 2006-192

July 29, 2009 – filing 2009-377