



*Instructor's Notes*

*For*

*Louisiana Real Estate Prelicensing*

Certified by the Louisiana Real Estate Commission  
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**LOUISIANA REAL ESTATE LICENSE LAW – I**  
**(R.S. 37:1430 - 1468)**

I. Definitions

- A. Associate broker - a person who holds a broker's license, and who is exclusively affiliated with, and sponsored by, another licensed real estate broker to participate in any activity described in this section
- B. Commission - the Louisiana Real Estate Commission
- C. Franchise agreement - an agreement whereby one party, the franchisor, authorizes a real estate broker, the franchisee, to use registered trademarks or other advertising tools to create a common identity among several brokers nationally, or regionally, for marketing purposes
- D. Individual real estate broker - an individual person licensed as a real estate broker, and does not mean a licensed corporation, limited liability company, or partnership licensed as a real estate broker
- E. Qualifying broker - the sponsoring broker for a licensed corporation, limited liability company, or partnership, and is the individual real estate broker designated by a licensed corporation, limited liability company, or partnership, by resolution, as its representative in all matters relating to its real estate business activities in Louisiana, and in administrative and regulatory matters before the Commission
- F. Real estate - shall mean and include condominiums and leaseholds, as well as any other interest in land, with the exceptions of oil, gas, and other minerals, and whether the real estate is situated in this state or elsewhere
- G. Real estate activity - any activity relating to any portion of a real estate transaction performed for another by any person, partnership, limited liability company, association, or corporation, foreign or domestic, whether pursuant to a power of attorney or otherwise, for a fee, commission, or other valuable consideration, or with the intention, or the expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration:
  - 1. Sells, exchanges, purchases, manages, rents, leases, or negotiates the sale, exchange, purchase, rental, or leasing of real estate
  - 2. Offers, attempts, or agrees to negotiate the sale, exchange, purchase, management, rental, or leasing of real estate
  - 3. Lists, offers, attempts, or agrees to list for sale or lease any real estate, or the improvements thereon
  - 4. Buys, or offers to buy, sells, or offers to sell, or otherwise deals in options on real estate or the improvements thereon
  - 5. Advertises, or holds himself, itself, or themselves out as engaged in the business of selling, exchanging, purchasing, managing, renting, or leasing real estate
  - 6. Assists or directs in the procuring of prospects, or the negotiation or closing of any transaction, other than mortgage financing which results, or is calculated to result in the sale, exchange, managing, leasing, or renting of any real estate, other than a provider of information, ideas, and materials to guide homeowners in the sale of their own property
  - 7. Is engaged in the business of charging an advance fee, or contracting for collection of a fee, in connection with any contract whereby he undertakes primarily to promote the sale, exchange, purchase, rental, or leasing of real estate through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both
    - a. Sells, or attempts to sell, or offers, or attempts to negotiate the sale of any business whose assets include real estate or leases of real estate
    - b. Lists, offers, attempts, or agrees to list for sale any business whose assets include real estate or leases of real estate
- H. Real estate salesperson - a person, other than an associate broker, sponsored by a licensed real estate broker to participate in any activity described in this section
- I. Timeshare developer - an individual, partnership, limited liability company, corporation, or other legal entity, or the successor or assignee thereof, who creates a timeshare plan, or who is in the business of making sales of timeshare interests which it owns, or purports to own
- J. Timeshare interest salesperson - a person who directly sells, or offers to sell, any timeshare interest
- K. Timeshare registrant - timeshare interest salespersons or timeshare developers registered by the Commission
- L. Real estate school - includes any place or institution certified by the Commission, which is open to the public for the instruction or training of individuals to engage in the selling of real estate
- M. Sponsoring broker - any individual real estate broker who sponsors associate brokers or real estate salespersons who participate in any activity described in this Section
- N. Real estate continuing education vendor - any school, place, individual, or institution certified by the Louisiana Real Estate Commission which offers courses or seminars in real estate and related subjects to fulfill continuing education requirements for license or certificate renewal purposes
- O. Licensee - any person who has been issued a license by the Commission to participate in any activity described in this Section
- P. Active licensee - any currently licensed person whose license has not been transferred to inactive status, and who is authorized to act in the capacity of a real estate broker or salesperson as provided for in this Chapter

- Q. Inactive licensee - any currently licensed person whose license has been transferred to inactive status, and who is not authorized to act in the capacity of a real estate broker or salesperson as provided for in this Chapter
- R. Property manager - one who, for a fee, commission, or other valuable consideration, manages real estate, including the collection of rents, supervision of property maintenance, and accounting for fees received for another
- S. Real estate transaction - the selling, offering for sale, buying, offering to buy, soliciting for prospective purchasers, managing, offering to manage, leasing, offering to lease, renting, or offering to rent any real estate or improvements thereon, or any business or other entity whose assets include real estate or leases of real estate
- T. Seller - the transferor in a real estate transaction, and includes an owner who lists real estate with an agent, whether or not a transfer results, or who receives an offer to purchase or lease real estate property of which he is the owner, from an agent on behalf of another. "Seller" includes a lessor
- U. Client - one who engages the professional advice and services of a licensee as his agent, and whose interests are protected by the specific duties and loyalties imposed by that relationship
- V. Agent - a licensee acting under the provisions of this Chapter in a real estate transaction
- W. Subagent - a licensee, other than a listing agent or a buyer's agent, who acts in cooperation with a listing agent in a real estate transaction
- X. Listing agent - a licensee who has obtained a listing of real estate to act as an agent for compensation
- Y. Buyer's agent - a licensee who is employed by, and represents only the buyer in a real estate transaction, regardless of whether such agent's compensation is paid by the buyer directly, or by the seller through a commission split with the listing agent
- Z. Buyer - the transferee in a real estate transaction, and includes a person who executes an offer to purchase or lease real estate from a seller, whether alone or through an agent, or who seeks the services of an agent with the object of entering into a real estate transaction. "Buyer" includes a lessee
- AA. Commingling - putting personal funds and funds belonging to other persons in one mass, or mixing the funds together so they cannot be identified or differentiated
- BB. Dealing in options - a person, firm, partnership, limited liability company, association, or corporation directly or indirectly taking, obtaining, or using an option to purchase, exchange, rent, or lease real property, or any interest therein, with the intent, or for the purpose of buying, selling, exchanging, renting, or leasing said real property, or interest therein to another, or others, whether or not said option is in his name and whether or not title to said property passes through the name of said person, firm, partnership, limited liability company, association, or corporation in connection with the purchase, sale, exchange, rental, or lease of such real property in interest
- CC. Listing agreement - a written document signed by all owners of real estate or their authorized attorney-in-fact authorizing a broker to offer or advertise real estate described in such document for sale or lease on specified terms for a defined period of time
- DD. Property management - the marketing, leasing, or overall management of real property for others for a fee, commission, compensation, or other valuable consideration
- EE. Broker or real estate broker - a licensed real estate broker performing activities as an individual real estate broker, a sponsoring broker, or designated qualifying broker, or a corporation, partnership, or limited liability company which has been granted a real estate license through a designated qualifying broker
- FF. Mold – any form of multicellular fungi that live on plant or animal matter in indoor or outdoor environments. Types of mold often found in water-damaged building materials include but are not limited to cladosporium, penicillium, alternaria, aspergillus, fuarium, trichoderma, memnoniella, mucor, and strachybotrys, chartarum.

## II. Louisiana Real Estate Commission

### A. Structure of the Commission

1. Consists of eleven members
2. Members are appointed by the Governor and are confirmed by the Senate
3. Members must be citizens of Louisiana, electors (voters), and shall have actively engaged in real estate as a broker for at least 5 years
4. Any vacancy shall be filled by the Governor
5. The Governor may remove any member of the Commission for cause
6. Five members of the Commission shall constitute a quorum
7. The Commission is limited to two meetings per month, unless three members request additional meetings
8. Compensation is limited to \$50 per day, plus actual expenses for meetings or for attending to Commission business
9. The Commission is domiciled in Baton Rouge

## B. Powers of the Commission

1. To regulate the issuance of real estate licenses, registrations, and certificates
2. To censure, suspend, or revoke licensees, registrants, and certificate holders
3. Impose additional continuing education
4. Impose civil penalties not to exceed \$5,000
5. Adopt all necessary rules and regulations necessary for enforcement of the license law
6. Require any proof it deems necessary as to the good character of an applicant
7. Promulgate and enforce rules and regulations relative to license or registration applications
8. Inspect records at the offices of licensees or registrants between 9:00 am and 4:00 pm, Monday - Friday, no holidays. These records may be subpoenaed
9. Subpoena any licensee, registrant, or witness for any hearing or investigation
10. May require brokers and timeshare developers to maintain escrow accounts for receiving deposits, which may not be commingled with personal funds
11. Appoint an Executive Director, and they may remove the Director for cause
12. Develop procedures to determine to whom a disputed escrow deposit belongs

## III. Licensing and Registration

- A. All licenses are classified as active or inactive
- B. Unlawful to engage in the real estate business without an active broker or active salesperson's license
- C. Unlawful to engage in the selling of timeshares without first registering as a timeshare developer or salesperson (licensees are exempted)
- D. Committing a single act in violation of the license law will be sufficient for the Commission to assess penalties
- E. Licenses are granted only to persons who have a good reputation for honesty, trustworthiness, integrity, and competence
- F. Conviction for forgery, embezzlement, obtaining money under false pretense, larceny, extortion, conspiracy to defraud, crimes involving moral turpitude, or any other felony may be grounds to refuse a license
- G. False statements of material fact on the license application may be grounds to refuse a license
- H. Previous suspension or revocation in Louisiana or any other state shall be grounds to refuse a license
- I. All licensees must be at least 18 years of age, and have a high school diploma or certificate of high school equivalency
- J. All broker applicants must have been an active salesperson for 4 years before applying for a broker's license
- K. All licensees must complete the following precursing education
  1. Salespeople - 90 hours
  2. Broker - 150 hours (must include 30 hours of broker responsibilities)
- L. All new licensees must complete 45 additional hours of post licensing within 180 days of initial license date. Hours may be used to satisfy 8 hours of the 12 hour continuing education requirement; however, post licensing hours will not satisfy the 4 hour mandatory continuing education topic specified by the Commission
- M. All active licensees must complete 12 hours of continuing education per year; 4 of the 12 required continuing education hours shall be in subjects specified by the Commission
- N. Acceptable subjects for continuing education include, but are not limited to:
  1. Louisiana Civil Law
  2. Louisiana License Law
  3. Louisiana Real Estate Commission Rules and Regulations
  4. Appraisal
  5. Finance
  6. Taxes
  7. Zoning
  8. Environmental Quality
  9. United States Department of Housing and Urban Development (HUD)
- O. Passage of an exam may be necessary to satisfy continuing education
- P. All applicants must attest to knowledge of fair housing laws
- Q. Non-residents may obtain a Louisiana license

## IV. Timeshare Registration

- A. Must register to sell timeshares (a real estate license is not necessary)
- B. Real estate licensees do not have to register to sell timeshares

- V. Corporations, Limited Liability Companies (LLC), and Partnerships
  - A. May be granted a broker's license once a certificate of authority to do business in this state is procured
  - B. Every application for a broker's license must be submitted by a licensed individual broker who has been chosen as its qualifying broker
  - C. An individual broker may serve as the qualifying broker for more than one organization
  - D. Upon dissolution, the organization must return the license of the designated qualifying broker and the licenses of all sponsored licensees to the Commission within 10 days of the dissolution
  - E. Upon termination of a qualifying broker's affiliation for any reason, the organization must notify the Commission and designate a new qualifying broker within 5 working days
  - F. Upon merger with another business entity, the organization shall notify the Commission within 5 working days following the merger
  
- VI. Inactive Licenses
  - A. An inactive licensee is one who has placed his license in the inactive status and is **NOT** authorized to act as a salesperson or broker
  - B. Procedures must be followed to become inactive; it does not happen automatically
  - C. Licensees may go inactive at anytime when in good standing, or during the 3 month delinquency period following expiration after December 31
  - D. Inactive licensees must pay an annual inactive fee, but do not have to do continuing education
  - E. Licensees may transfer from inactive to active status at any time provided proper renewal has been maintained, and all applicable fees have been paid, as well as realizing sufficient completion of continuing education hours as follows:
    - 1. One to three years - 20 hours of continuing education
    - 2. Three to five years - 40 hours of continuing education
    - 3. Beyond five years - maximum of 80 hours
  - F. Licensees inactive for more than one year will be required to complete as part of their hours for license activation, a 4 hour course covering rules and regulations or license law within one year prior to license activation
  
- VII. Who Does Not Need A License
  - A. Any entity acting individually, or through an employee, and not otherwise engaged in the real estate business, performs acts of ownership, except those in the business of timeshares, which must be registered
  - B. Services rendered by an attorney through the course of other legal representation
  - C. A receiver, trustee in bankruptcy, administrator, executor, tutor, or civil sheriff for any parish
  - D. A trustee selling under a deed of trust or a mortgage
  - E. Any entity which sells, exchanges, leases, or manages its own property, except timeshares
  - F. Salaried employees of real estate brokers who manage property under a management contract, if the salaried employee is limited to:
    - 1. Delivering or receiving leases or amendments
    - 2. Receiving security deposits, rental payments, or any other related payment made payable to the property manager or owner
    - 3. Showing rental units, as well as executing leases or rental agreements, as long as the employee is acting under the direction of the broker, and the broker takes full responsibility for the employee's actions
    - 4. Providing information concerning rental units, leases, applications for lease, or security deposits
    - 5. Performing general clerical, administrative, and management tasks
  
- VIII. Issuance of License, Certificate, or Registration
 

Associate brokers, salespersons, and timeshare interest salespersons shall not conduct any activities requiring licensing or registering until their license or registration has been issued, and is in the custody of their sponsoring broker or employing timeshare developer, or written authorization by the Commission has been received by the broker or timeshare developer
  
- IX. Return of License or Registration Upon Transfer or Termination
  - A. The sponsoring broker has 5 days to return the license of an associate broker or salesperson when the relationship is terminated by either party for any reason (also applicable for timeshares)
  - B. The associate broker or salesperson shall not act under the capacity of the license once it has been dispatched to the Commission
  - C. Upon receipt of the license by the Commission, the transfer fee, if applicable, and a new sponsorship form, the licensee may begin working when notified by the Commission

- D. When the association of a designated qualifying broker with a corporation, limited liability company (LLC), or partnership is terminated by either party for any reason, the following actions shall be taken:
1. The designated broker must notify all sponsored licensees of the termination, and the effective date of the termination
  2. A new designated qualifying broker must be appointed before any sponsored licensees or the organization itself can practice real estate
  3. The outgoing qualifying broker shall deliver the licenses to the new qualifying broker
  4. Within 5 days of the designation, the new qualifying broker must notify all sponsored licensees of the designation, and of the effective date of the designation
  5. The outgoing qualifying broker shall return his license as qualifying broker for the organization within 5 days following the effective date of designation of the new qualifying broker

X. Renewal

- A. Every license, certificate, or registration shall be issued for a period of one year, and shall expire on December 31
- B. Those not renewed by January 1 shall be considered expired
- C. Once expired, renewal may be obtained after payment of renewal and delinquent fees, and upon filing of a complete renewal application
- D. Delinquent renewal is possible during the first 3 months after expiration (March 31 deadline)
- E. If not renewed during the 3 month delinquent period, then the licensee shall forfeit all renewal rights and must reapply as an initial applicant, and meet all requirements as such (this also included inactive licensees)
- F. Additional fees are required for delinquent renewal:
  1. January 1 - February 15 = \$50
  2. February 16 – March 31 = \$200

## LOUISIANA REAL ESTATE LICENSE LAW - II

(R.S. 37:1430 - 1468)

### I. Broker's Office

- A. Broker must have a physical address where records are kept
- B. If more than one office, broker must have a branch office license for each additional location

### II. Compensation

- A. No payment may be made to anyone who does not have a license when required to have a license
- B. The broker may not compensate a licensee if the broker has knowledge that the licensee has agreed, or intends to compensate an unlicensed person
- C. Payment may be made to former licensees for transactions negotiated by them while licensed
- D. Licensees may accept commission from former brokers for transactions negotiated while with that broker, as long as the payment is transmitted through the current sponsoring broker
- E. Licensees can only accept compensation from their current qualifying or sponsoring broker
- F. Brokers may direct payments to a licensee through an unlicensed business organization of which the licensee is the sole officer or manager
- G. There is no such thing as a "finder's fee" or "bird-dog fee" - it's illegal
- H. No suit or action shall be instituted by any unlicensed person who acted illegally in providing services, except for former licensees who seek compensation for services performed while still licensed
- I. A real estate salesperson or associate broker must be an independent contractor for the broker with whom he is affiliated

### III. Revocation or Suspension of Licenses

- A. Revocation or suspension of a broker automatically suspends the licenses of all sponsored licensees
- B. When a broker is suspended or revoked, he must return all licenses of salespeople and associate brokers within 72 hours
- C. When any licensee is suspended or revoked, the sponsoring broker must return the licensee's license to the Commission within 72 hours

### IV. Providing Documents and Maintaining Records

- A. Any party signing a real estate document must receive a copy immediately upon signing
- B. All parties to a document must receive a copy of the fully executed document within 5 days of the last party signing
- C. All listing agreements must have a fixed expiration date, which is not subject to any qualifying terms or conditions
- D. Brokers must maintain records for 5 years:
  - 1. Bank statements, deposit slips, and cancelled checks relating to all escrow accounts
  - 2. Copies of all documents and contracts related to their real estate activities
- E. Note that real estate brokers have record keeping requirements, but agents do not (except agency brochure)

### V. Duty of Real Estate Licensees to use Purchase Agreement Forms

- A. A licensee representing either the buyer or the seller of residential real estate property must complete the purchase agreement form prescribed by the Commission
- B. No person shall alter the purchase agreement form; however, addendums and amendments may be used.
- C. The purchase agreement form applies to the sale of residential real estate property on or after January 1, 2008.

### VI. Duty to Report Legal Action

- A. All licensees, registrants, and certificate holders must report to the Commission within 10 days:
  - 1. Any criminal prosecution by arrest or indictment involving real estate activities in which he was supplying representation
  - 2. Any final judgment involving real estate activities in which he was supplying representation
  - 3. Any final conviction for forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiring to defraud, theft, moral turpitude, or any other felony

- B. All licensees registrants, and certificate holders who are acting as the custodian of client funds, must notify the Commission within 10 days of the institution of bankruptcy proceedings
  - 1. The petitioner is the debtor, whether voluntary or involuntary, personal, corporate, partnership, or at any time when connected with real estate business activities
  - 2. The report to the Commission shall include:
    - a. Documentation identifying the owner(s) of the funds
    - b. The amount of funds held
    - c. The name of the financial institution
    - d. The account number in which the funds are being held

VII. Death or Incapacity of a Real Estate Broker

- A. The succession of those to follow through with current business on behalf of a deceased broker also pertains to those brokers that become physically or mentally impaired (i.e., 1st choice: associate broker, 2nd choice: salesperson, 3rd choice: outside broker)
- B. Upon the death of the sponsoring broker, any associate broker affiliated with the deceased broker, after proper notification to and approval in writing by the Commission, may take over to complete any pending contracts
- C. The associate broker taking over must immediately notify all sponsored licensees of the death of the broker
- D. The associate broker shall advise all sponsored licensees that no new contracts shall be instituted and that their licenses shall be returned to the Commission
- E. The associate broker shall return the licenses of the sponsored licensees to the Commission within 5 days
- F. If no associate broker is available, a salesperson may take over
- G. In the event that a deceased broker did not have any sponsored licensees, the Commission may designate a broker to take over
- H. If business was a corporation, partnership, or LLC, a new qualifying broker must be appointed within five (5) days

VIII. Investigations

- A. At its discretion, the Commission may investigate any licensee
- B. The Commission must investigate any written and signed complaint
- C. All licensees are required to cooperate with investigations
- D. Licensees are required to provide any documents, books, or records in his control that is relevant to an investigation
- E. The Real Estate Commission does not become involved in resolving commission disputes
- F. It is illegal to give false information to the Commission

IX. Causes for Censure, Suspension, or Revocation. The license law identifies 35 specific reasons:

- A. Committing any act in violation of the Louisiana real estate license law not specified in §1455 of the Louisiana license law
- B. Violating any rule or regulation promulgated by the Commission in the interest of the public and consistent with the provisions of §1455 of the Louisiana license law
- C. Committing any act in violation of the Louisiana Timesharing Act
- D. Failure to account for any money coming into his possession belonging to others
- E. Failure to properly disburse money which belongs to others upon its coming into his possession
- F. Commingling the money or other property of his principals with his own
- G. Accepting, giving, or charging any undisclosed commission, rebate, or direct profit on expenditures made for a principal
- H. Representing or attempting to represent a real estate broker or agency, other than the licensed broker or agency listed on the real estate license issued by the Commission
- I. Acting in the dual capacity of agent and undisclosed principal in any transaction
- J. Guaranteeing or authorizing any person to guarantee future profits which may result from the resale of real property
- K. Offering real estate for sale or lease without the written consent of all owners or their authorized agents
- L. Offering real estate for sale or lease on terms other than those authorized by the owner or his authorized agent
- M. Offering any inducement to or in any way encouraging a party to a written contract involving the sale, lease, or management of real estate to break such contract for the purpose of substituting, in lieu thereof, a new contract with another principal or licensee
- N. Negotiating a sale, exchange, lease, or management of real estate directly with an owner or lessor if he knows that such owner has a written outstanding contract in connection with such real estate, granting an exclusive agency or an exclusive right to sell, exchange, lease, or manage the real estate to another broker
- O. Knowingly making any false representations to any party in a real estate transaction
- P. Acting for more than one party in a real estate transaction without the written acknowledgment of all parties to the transaction



- Q. Failure by an associate broker or salesperson to place, as soon after receipt as practicable, in the custody of his licensed broker, any deposit money or other money or funds entrusted to him by any person dealing with him as the representative of his licensed broker, or in connection with any transaction involving the sale, lease, or management of real property
  - R. Representing to any lender, guaranteeing agency, or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon
  - S. Knowingly permitting a sponsored licensee to operate as an individual real estate broker
  - T. Knowingly permitting a sponsored licensee or employee to conduct real estate activities in violation of the Louisiana license law
  - U. Failure of a licensee to provide the parties to a real estate transaction with an agency brochure
  - V. Failure to advise all parties to a real estate transaction in writing of compensation being received from any source in connection with that real estate transaction
  - W. Failure, without just cause, to surrender unto the rightful owner, upon demand, any document or instrument received by a licensee or registrant in the course of a real estate transaction
  - X. Accepting, other than cash, as earnest money or good faith deposit, unless that fact is communicated to the owner prior to the acceptance of the offer to purchase, and such fact is shown on the face of the purchase and sale agreement
  - Y. Failure of a licensee to inform the buyer and seller at the time an offer is presented that either party may be expected to pay certain costs such as discount points, etc. and the approximate amount of said costs
  - Z. Failure to reduce a bona fide offer to writing when a proposed purchaser requests that a written offer be submitted
  - AA. Failure to disclose to a buyer a known material defect regarding the condition of real estate of which a broker, salesperson, or timeshare interest salesperson has knowledge
  - BB. Having been finally adjudicated and found guilty for refusing because of race, color, national origin, sex, or ethnic group to show, sell, or rent any real estate for sale or rent to qualified purchasers or renters for any violation of the Fair Housing Act of 1968, or the Louisiana Equal Housing Opportunity Act, and/or any amendments thereto, or any successor legislation subsequently following
  - CC. Having been convicted of a felony or entered a plea of guilty or nolo contendere to a felony charge
  - DD. Refusing to appear or testify under oath at any hearing held by the Commission
  - EE. Procuring a license, registration, or certificate for himself or anyone else by fraud, misrepresentation, or deceit
  - FF. Failure to comply with an order or consent issued or approved by the Commission pursuant to adjudicatory proceedings
  - GG. Failure by a licensee to provide a buyer or seller with a written property disclosure form for sales and certain leases involving residential real property pursuant to R.S. 9:3195 et seq.
  - HH. Engaging in real estate activity or attempting or offering to engage in real estate activity within the state during any period of suspension of a real estate license by the Commission or revocation of any real estate license by the Commission
  - II. Using advertising that is misleading or inaccurate
- X. Real Estate Commission Hearings
- A. Before censuring, suspending, or revoking any licensee, a hearing must be held
  - B. Licensee must be notified at least 20 days in advance of the hearing
  - C. Notice must be by certified mail or hand delivery by Commission personnel sent to last business address of licensee
  - D. Sponsoring or qualifying broker must be notified of the charges against a licensee
  - E. If a broker is designated as the qualifying broker for more than one organization, then each organization will be notified of the charges
  - F. The Commission may issue subpoenas or subpoenas duces tecum to anyone in the state
  - G. All decisions by the Commission are reviewable by the Nineteenth Judicial District Court in East Baton Rouge
  - H. Requests for review must be filed within 30 days of the final decision of the Commission
  - I. Licensee may appeal decision of the court and may remain in business until appeal is heard
  - J. Penalty for violation of license law is up to two thousand dollars (\$2,000) and/or 2 years in jail
  - K. The Commission may issue a subpoena to any person or persons who the Commission has probable cause to believe has engaged in real estate activity without a currently valid license.
    - 1. The subpoena will be served upon the unlicensed individual personally or by any type of mailing requiring a return receipt
    - 2. The subpoena will include a statement of the manner in which the unlicensed person will be required to respond
  - L. The Commission may impose a civil penalty of no more than \$5,000, as well as costs and attorney's fees, upon any unlicensed person who is found to have engaged in real estate activity without a license

- M. No person engaged in real estate activity without a license will have the right to receive any compensation for services rendered

#### XI. Real Estate Recovery Fund

- A. Pool of \$400,000 maintained by the Commission to fund payments to those adjudged to have suffered monetary damages through the acts of licensees, based on the following reasons:
  - 1. Any violation of the Louisiana real estate license law
  - 2. Obtaining money or property by fraud, misrepresentation, deceit, false pretenses, artifice, trickery, or any other act which would constitute any violation of license law
- B. Claimant must first win judgment in court
- C. Claimant must attempt to collect from licensee first
- D. Claimant must show it is not possible to recover from licensee
- E. Maximum payment is:
  - 1. \$20,000 per transaction
  - 2. \$50,000 total per licensee
- F. If payment is made from the fund on behalf of any licensee, the licensee shall be automatically revoked
- G. If the claim does not exceed \$2,000, the aggrieved party may submit a claim to the Commission by notarized affidavit giving all pertinent facts to the claim. This process allows the aggrieved party to bypass the normal conditions of obtaining a judgment, etc.
- H. Each year any amount remaining in the fund in excess of \$400,000 is transferred to the Research and Education Fund

#### XII. Real Estate Research and Education Fund

- A. Established to promote the advancement and more efficient administration of the real estate industry, and thereby serves to protect the public
- B. The fund is used for the following reasons:
  - 1. To establish chairs at Louisiana institutions of higher learning
  - 2. To contract for real estate projects in Louisiana
  - 3. To promote real estate programs geared toward advancing the field of real estate in Louisiana

#### XIII. Errors and Omissions Insurance

- A. All active licensees must carry Errors and Omissions insurance
- B. Licensees have the option of obtaining Errors and Omissions insurance through the Commission or independently, provided that the coverage complies with the minimum requirements established by the Commission

#### XIV. Psychologically Impacted Property

- A. Psychologically impacted property includes:
  - 1. Site of homicide, suicide, or felony
  - 2. Site where current or former occupants were infected with HIV or diagnosed as having AIDS
- B. Licensees are not required to disclose psychological impacts

#### XV. Sex Offenders

- A. Every written lease or rental agreement and every written contract for sale of residential immovable property must contain notice regarding the statewide database disclosing the locations of individuals required to register as sex offenders
- B. Notice must include telephone number and Internet site for the statewide database
- C. Applies only to written agreements and contracts that are entered into by parties on or after January 1, 2002

#### XVI. Mold Disclosure

- A. The mold informational pamphlet approved by the Commission may be distributed to buyers, but is not required
- B. If the licensee delivers the mold informational pamphlet to the buyer, the licensee is not required to provide any additional information concerning mold
- C. The licensee will not be held liable for any error, inaccuracy, or omission of information contained in the pamphlet if:
  - 1. It was not within the person knowledge of the licensee
  - 2. It was based on information provided by the Commission, a public agency, or an expert dealing with matters within the relevant scope of their license and ordinary care was exercised by the licensee in obtaining and transmitting such information

# **LOUISIANA REAL ESTATE COMMISSION RULES AND REGULATIONS - I**

## **I. Application for Initial Licenses**

- A. Application**
  - 1. Every application must be fully completed, notarized, and accompanied by the prescribed fees
  - 2. Must include a copy of the certificate from ProEducat
  - 3. Salespersons must provide a copy of the broker sponsorship form ("B") at the time the initial application is made, or within 90 days of passing the examination
- B. Broker and salesperson license applications**
  - 1. Prelicensing courses (including college credit) will only be granted full credit if completed within 5 years
  - 2. The Commission may accept coursework from other jurisdictions or from other nationally recognized institutes toward fulfillment of prelicensing hours
  - 3. Must complete at least 30 hours of Louisiana studies including license law, rules and regulations, and civil law
  - 4. License verification is required from each jurisdiction from which a license is, or was held
  - 5. If requesting a waiver of the national portion of the exam, verification of passing an equivalent real estate exam within 5 years is required
- C. Corporate, partnership, and limited liability company (LLC) broker's license**
  - 1. The application must be submitted by the designated qualifying broker
  - 2. The application must be fully completed, notarized, accompanied by the prescribed fees, and the following documents:
    - a. A copy of the resolution by a principal in the organization designating its qualifying broker
    - b. A notarized affidavit of the qualifying broker
    - c. A copy of the registration certificate issued by the Secretary of State
    - d. A copy of any registration issued by the Secretary of State with regard to any trade name or trademark to be used

## **II. Examinations**

- A.** Application, fees, and other documentation may be mailed or delivered to the Real Estate Commission for determination of eligibility to take the licensing exam
- B.** Real Estate Commission will issue authorization to take the exam - once received, applicant may telephone test center for appointment
- C.** The test authorization form is good for only one exam, and it must be taken within 90 days of issuance
- D.** Any unethical activity such as using, supplying, or attempting to do either with concern to copyrighted test questions shall be grounds for denial of a license
- E.** Student must take admittance authorization, legal photo identification along with a second form of identification, calculator, and pencil or pen to the exam
- F.** Failure of either part or both parts of the exam will result in retest requirement and payment of additional fees. Retake only applies to the portion failed
- G.** Failure of the applicant to achieve a passing score on both portions of the exam within a one year period of the initial exam, will result in having to retake the entire exam

## **III. Fees**

- A.** Fees shall cover a period of one calendar year and shall not be prorated
- B.** Providing NSF checks to the Commission shall be grounds for cancellation of the transaction for which the fee was submitted, and/or suspension or revocation. Within 10 days of notification by the Commission of the NSF check, the person must cover payment, plus a \$25 processing fee

## **IV. Renewal Applications**

- A.** Licensees are responsible for annual renewal prior to December 31 each year
- B.** Certificate for 12 hours of continuing education must be submitted with each renewal application (4 hours of which to be mandated by Commission each year), if requested by Commission
- C.** Failure of sponsoring broker to renew timely will result in suspension of all sponsored licensees
- D.** If license is not renewed by end of delinquent renewal period (March 31), licensee must reapply as initial applicant, meet current education requirements, and retake the licensing examination

#### V. Broker Affiliation

- A. An individual broker may become exclusively affiliated as an associate broker with a sponsoring broker
- B. A broker applicant desiring to become an associate broker must notify the Commission, in writing, as to the name of the sponsoring broker prior to issuance, then the license will be issued to the sponsoring broker
- C. An individual broker desiring to become an associate broker must notify the Commission, in writing, as to the name of the sponsoring broker, the effective date of the relationship, and it shall be accompanied by the broker's license and transfer fee
- D. An associate broker is prohibited from maintaining escrow accounts
- E. Individual brokers that have become associate brokers may continue to maintain their escrow accounts until all individual pending transactions have closed, and monies property disbursed
- F. All funds received by the associate broker in a transaction shall be placed in the custody of the sponsoring broker

#### VI. Transfers and Terminations

- A. The transfer of the license of a salesperson or associate broker in the active status, or termination of sponsorship, will be accomplished by completing a transfer form and paying any required fees
- B. The sponsoring broker shall send licenses to the Commission within 5 days of the execution of the transfer form
- C. No transfer fee or delinquent renewal fee is required for transfer or change of status within 60 days of any of the following circumstances:
  - 1. Death of sponsoring broker
  - 2. Failure of sponsoring broker to renew his license
  - 3. Suspension or revocation of sponsoring broker
  - 4. Sponsoring broker's license is transferred to inactive status
  - 5. When sponsoring broker elects to discontinue the sponsorship of a licensee
- D. Licensees may transfer from active to inactive, or inactive to active status, by completing the Commission's transfer form, satisfying any necessary requirements, and paying the appropriate fees
- E. Corporate, partnership, and limited liability company (LLC) broker licenses shall remain in the active status

#### VII. Termination Responsibilities

- A. Upon termination, all keys, contracts, listing information, agency forms, and other business related documents must be turned over to the sponsoring broker (this does not prevent licensee from retaining copies of documents)
- B. Settlement of matters that are financial in nature (i.e., fees due professional organizations), rest solely with the parties to the relationship
- C. Any financial disputes should be addressed through civil litigation and not through the Commission
- D. Broker must report failure to return above listed items when license is returned to the Real Estate Commission. This shall constitute a written complaint filed with the Commission

#### VIII. Names on Licenses; Trade names, Symbols, and Trademarks

- A. All licenses, registrations, and certificates issued by the Commission will be issued in the name of the legal entity of the applicant
- B. Licenses, registrations, and certificates will not indicate a trade name, unless it has been registered with the Secretary of State and is on file at the Commission
- C. Trademarks and symbols must be registered with the Secretary of State and a copy filed with the Commission

#### IX. Concurrent Licensing

- A. Brokers may be licensed individually and as qualifying broker for one or more corporations or partnerships
- B. Associate brokers and salespeople may be sponsored by only one broker at a time
- C. Licensees may not hold broker and sales license at the same time
- D. Brokers may not act independently as an individual broker and as an associate broker at the same time

## **LOUISIANA REAL ESTATE COMMISSION RULES AND REGULATIONS - II**

### **I. Advertising**

- A. All advertising must include broker's name and telephone number
- B. Name and telephone number of salesperson may appear in the advertising
- C. Property may not be advertised without written authorization from the owner
- D. Advertising must accurately represent the property. "Puffing" should be avoided
- E. Advertising of residential property must include a date of publication
- F. Advertising of franchise organization must include "each office is independently owned and operated" in all advertisements
- G. Advertising by licensees for property they own or offers to purchase or rent must include "licensed real estate agent," unless with a real estate agency
- H. Licensees shall not create the impression that they are a state certified appraiser unless they are one, and no property valuation may be referred to as a "state certified" appraisal, unless the licensee is "state certified" as an appraiser
- I. Internet Advertising
  - 1. Web pages
    - a. The following information must be on each page of the site in which the advertisement appears:
      - 1) Broker's name as registered with the Louisiana Real Estate Commission
      - 2) City, state, and country in which the broker's main office is located
      - 3) Regulatory jurisdiction in which the broker holds a license
      - 4) Associate brokers and salespersons must also include their name
  - 2. Electronic communication
    - a. Including, but not limited to, e-mail, e-mail discussion groups, and bulletin boards
    - b. The following information must be on the first or last page of all communications:
      - 1) Broker's name as registered with the Louisiana Real Estate Commission
      - 2) City, state, and country in which the broker's main office is located
      - 3) Regulatory jurisdiction in which the broker holds a license
      - 4) Associate brokers and salespersons must also include their name

### **II. Escrow and Trust Accounts**

- A. All brokers must have a sales escrow account if holding client funds
  - 1. Deposits received as earnest money or deposit are placed here
  - 2. Non-interest bearing unless parties desire otherwise
  - 3. Broker limited to \$2,500 of personal funds in this account
  - 4. May not commingle with personal funds
- B. Optional trust accounts
  - 1. Rental trust account
  - 2. Security deposit trust account
- C. Each non-resident broker shall open and maintain escrow accounts as specified for resident brokers
- D. A broker may open additional escrow accounts to accommodate business transacted out of the branch offices
- E. Brokers may designate sponsored licensees and/or employees to sign checks for an escrow account, but the prospective broker is still responsible for the accounts
- F. If the interest of the principal parties to a particular transaction, or series of transactions, would be served, and with their prior written consent, a broker may open additional escrow accounts
- G. A broker, in connection with property management activities, may keep funds in excess of \$2,500 in a rental trust checking account for the temporary, limited, and specific purpose of enabling the broker to satisfy financial obligations for, or on behalf of, clients
- H. Broker may not withdraw funds from escrow accounts except:
  - 1. Upon mutual written consent of all parties having an interest in the account
  - 2. Upon order of the court
  - 3. For a concursus proceeding
  - 4. For disposition by the Commission on an escrow disbursement order
  - 5. To properly refund to a buyer at the time of closing
  - 6. To pay service charges on the account
  - 7. Upon approval by the Commission in a sale of a licensed agency
  - 8. To comply with federal or state regulations
  - 9. To disburse funds from escrow to the appropriate party upon a reasonable interpretation of a contract for the sale of real estate
- J. Deposits must be disbursed within 30 days of an agreement between the principals in a real estate transaction
- K. Broker must notify the Commission within 10 days of closing a trust account due to sale or acquisition of agency

- L. Upon revocation, suspension, lapse of license for any reason, or bankruptcy, the broker shall continue to maintain the escrow account(s) until all deposits have been properly disbursed
- M. Individual brokers that have become associate brokers may continue to maintain their escrow accounts until all individual pending transactions have closed and monies properly distributed
- N. The transferring broker shall advise the Commission in writing within 5 working days of the effective transfer date, as to the new status of the amount of funds in each escrow account, and the approximate date each account will be closed

### III. Disbursement of Escrow Accounts

- A. When a broker determines or has knowledge that a dispute exists (the first sign of a dispute would be a missed closing) as to the ownership or entitlement of a deposit or funds held in a sales escrow account, as a result of a real estate sales transaction, it is the obligation of the broker holding the funds to immediately notify all of the parties and licensees involved of the dispute, and within 90 days of the scheduled closing date, or determination or knowledge that such a dispute exists, whichever first occurs, to do one of the following:
  - 1. Release the funds upon written mutual consent of all parties
  - 2. Disburse the funds upon a reasonable interpretation of the contract, but disbursement may not occur until 10 days after the broker has notified, in writing, all parties and licensees
  - 3. Deposit the funds into the registry of any court of competent jurisdiction and proper venue
  - 4. Deposit the funds, including original promissory notes, with the Commission, along with a request for an escrow disbursement order
  - 5. Disburse the funds upon the order of the court of competent jurisdiction
- B. Upon receipt of a request for an escrow disbursement order, the Commission may:
  - 1. Deposit the funds in dispute into an interest bearing escrow checking account pending final disposition
  - 2. Commence an investigation by its staff of the dispute
  - 3. Upon the completion of an investigation, consider the findings and issue an escrow disbursement order
  - 4. Call an adjudicatory hearing before disbursing the funds
  - 5. Deposit the funds with the court

### IV. Change of Address

- A. The Commission must be notified within 10 days if a licensee changes his home address, business address, or telephone number
- B. Notification must be in writing

### V. Compensation

- A. Real estate brokers and salespeople usually are paid by the seller through commission split with listing agent
- B. Payment by the buyer is legal
- C. Licensees shall not accept compensation from more than one party without the written acknowledgment of all parties to the transaction

### VI. Disclosure by Licensee

A licensee acting as a principal in a real estate transaction, whether individually, or through any entity from which the licensee has an interest, shall disclose his or her status as a licensee to all other principals in the transaction, in writing, prior to entering into any real estate contract

### VII. Agency Disclosure

- A. Agency disclosure informational pamphlet
  - 1. Given to all parties in a real estate transaction involving the sale or lease of real property
  - 2. Given at the time when substantive contact is made between the licensee and the customer
  - 3. Parties to transaction must sign and date pamphlet and licensee signs as a witness
  - 4. Licensee will retain the signed receipt for 5 years
  - 5. If principal will not sign, licensee must prepare, in writing, the nature of the proposed real estate transaction, time and date the pamphlet was provided, and the reason given for not signing. Document must be kept for 5 years
- B. Dual agency disclosure
  - 1. Used when representing the buyer and seller
  - 2. Must be signed no later than when a purchase agreement is entered into by the clients
  - 3. A copy must be retained by licensee for a period of 5 years

#### VIII. Mold Disclosure

- A. The EPA is the official source of any mold information pamphlet approved by the Commission
- B. A licensee who chooses to deliver the mold information to a buyer, may do so by any of the following:
  - 1. Delivering "A Brief Guide to Mold, Moisture, and Your Home" pamphlet to a residential buyer
  - 2. Delivering "Mold Remediation in Schools and Commercial Buildings" pamphlet to a commercial buyer
  - 3. Directing the buyer to the mold informational pamphlets maintained on the EPA's website

#### IX. Presentation of Offers

- A. All written offers must be presented to the seller immediately
- B. All offers and counteroffers must be annotated to indicate date and time offers were presented, accepted, or rejected by parties to the transaction
- C. All negotiations must take place between the listing broker or the designated agent, not the seller, unless authorized by the listing broker. This also applies to buyers who are being represented by a selling broker
- D. All licensees receiving written offers or counteroffers in a cooperative transaction must indicate the time of day and date the document was received
- E. All written offers and counteroffers presented to a seller and/or buyer, and not accepted, shall be clearly marked as rejected and signed by the seller and/or buyer
- F. If seller has authorized the listing broker to reject offers, then listing broker may reject, but must still get seller to reject, and forward a copy of seller's rejection to the cooperating broker

#### X. Investigations and Hearings

- A. The Real Estate Commission must investigate all written and signed complaints
- B. Licensees will be given 20 days notice of hearings involving themselves

#### XI. Responsibilities

All licensees, certificate holders, and timeshare registrants are burdened with the responsibility of being knowledgeable and fully aware of all laws regulating the real estate industry in Louisiana including, but not limited to, the rules and regulations, license law, and civil law

#### XII. Waiver of Renewal Requirements (Veterans Waiver)

- A. Licensees inducted into the military service, or those transferred from Louisiana due to military service, shall be exempt from renewal requirements
- B. Upon returning to Louisiana, veterans shall have 6 months to request re-issuance of their license
- C. The above applies also to spouses of veterans

#### XIII. Reciprocity

- A. Louisiana may enter into reciprocal licensing agreements with other states
- B. Non-resident licensees must abide by Louisiana licensing laws

#### XIV. Out-of-State Broker Cooperation

- A. A Louisiana broker and an out-of-state broker may cooperate in transactions involving real estate in Louisiana
- B. The transaction shall be under the direct supervision of the Louisiana broker
- C. The Louisiana broker shall take full responsibility for the out-of-state broker
- D. Any advertising must contain both brokers' names
- E. The out-of-state broker may place a sign on the property, provided written consent is given by the Louisiana broker
- F. Any monies collected in the transaction shall be placed in the appropriate escrow account of the Louisiana broker, unless all parties agree otherwise in writing
- G. For each cooperating transaction between the brokers, the Louisiana broker must file a copy of the cooperating agreement with the Commission prior to the property being advertised, shown, or any contract taken
- H. The cooperating agreement must include:
  - 1. A description of the subject property
  - 2. Agreement between both brokers to sign all written reports and contracts
  - 3. Agreement to comply with the rules and regulations and the license law
- I. Any compensation in the transaction will be paid to the Louisiana broker, who will, in turn, compensate the out-of-state broker
- J. Negotiation will determine the compensation split between the two brokers
- K. Agreement as to compensation must be in writing

- L. A Louisiana broker may share a commission with a broker in another state, provided that:
  - 1. The foreign broker acts only as a referral agent
  - 2. The foreign broker is not involved in actual negotiations, execution of documents, collections of rent, property management, or other brokerage activities involving more than a mere referral
- M. The Commission shall have the power to impose sanctions on any Louisiana licensee who acts in the capacity of a licensee in another state from which he is not licensed, or from which he has not complied with that state's laws regarding real estate brokerage

XV. Real Estate Schools

- A. Recruiting licensees for real estate brokers is prohibited at real estate schools
- B. Anyone guilty of recruiting is subject to license revocation
- C. Real estate schools may not be operated in the same facility or under the same name as a real estate brokerage
- D. Students of a real estate school may not be employed in a brokerage owned by a school owner, or the sponsoring broker of a school owner or instructor for a period of one year

**INSTRUCTIONS FOR RETRIEVING LREC LICENSING APPLICATION**

INTERNET ADDRESS: [www.lrec.state.la.us](http://www.lrec.state.la.us)

Go to: Forms

Go to: LICENSE APPLICATIONS



# Louisiana Civil Law – I

## PROPERTY

- I. Classifications of Property (**Things**); In Louisiana, property means *things*. The term is also used in reference to the relationship that exists between people and property. Property, or things, can fall into several classifications that are not mutually exclusive. That is, a thing can simultaneously fall into one or more of the following classifications
  - A. **Corporeal Things** - things with a body
    - can be touched or felt (Example: a table, a dog)
    - animate or inanimate
  - B. **Incorporeal Things** - things without a body
    - rights on things are incorporeal (Example: inheritance rights, servitudes, obligations)
  - C. **Private Things** - owned by individuals or corporations
  - D. **Common Things** - may not be owned by anyone (Example: air, the high seas)
  - E. **Public Things** - things owned by the state (Example: running water, the territorial seas, the seashore)
  - F. **Movable Things** - personal property, not real estate
  - G. **Immovable Things** - real estate
- II. **Immovables** (Real Property); “real estate” is defined as including condominiums and leasehold interests, as well as any other interest in land with the exception of oil, gas, and other mineral rights, and whether the real estate is situated in Louisiana or elsewhere
  - A. **Tracts of land** - when their component parts are immovables
  - B. **Component parts** – Objects that are considered to be real estate such as buildings, other construction permanently attached to the ground, standing timber, unharvested crops or ungathered fruits of trees are component parts when they belong to the owner of the ground. Buildings and standing timber are separate immovables when they belong to a person other than the landowner
    1. **Improvements** - things such as buildings on the land are considered immovables
    2. **Component by incorporation** (as in building materials) - things which are personal property (bricks) once converted into a building are considered immovable
    3. **Component by attachment** - things attached to land or an immovable are considered immovable
    4. **Component by declaration and registry** – things such as mobile homes or farm equipment by declaring them so, and registry in the conveyance office
    5. **Incorporeal immovables** - rights and actions that apply to immovables (Example: predial servitudes and mineral servitudes)
- III. **Movables** (Personal Property)
  - A. **Corporeal movables**
    1. Things that normally move from place to place
    2. Building materials for construction
  - B. **Incorporeal movables**- rights obligations and actions that apply to a movable such as stocks, bonds and annuities
  - C. **Movables by anticipation** - unharvested crops and ungathered fruits that don't belong to the landowner
- IV. Forms of Legal Descriptions
  - A. Rectangular Survey System
    1. Louisiana Meridian – west side of the state
    2. St. Helena Meridian – east side of the state
    3. One baseline- along the toe of the “boot”
  - B. Metes and bounds
  - C. Lot and block (plat system)
- V. Measurements
  - A. **Acre** - 43,560 square feet
  - B. **Arpent** - 5/6 acre or .85 acre (0.84625 to be exact); also 192.24 feet as a linear measurement
  - C. **Vara** - 33.33 inches
  - D. **Toise** - 6.39 feet (Note: the exact equivalent for arpent, vara, and toise varies by locality)

## RIGHTS IN IMMOVABLES

- I. **Full or Perfect Ownership** - this is “fee simple” under common law. It is the “highest” form of ownership; that is, it has the maximum number of rights
  - A. **Usus** - the right to the use of land
  - B. **Fructus** - the right to derive income from the land; rent, royalties, etc.
  - C. **Abusus** - the ownership of the land; the right to sell or dispose of the property. If a person has only the right of abusus they are referred to as the “naked owner”
  
- II. **Servitudes**
  - A. **Personal** - a burden in the form of a person
    - 1. **Usufruct** - right to use and fruits. Similar to a “life estate” in common law. May be created by law (usufruct of the surviving spouse) or by will or contract. Usufructs may be leased or encumbered but terminate according to the provisions of the usufruct
    - 2. **Habitation** - right to inhabit; non-transferable (i.e. may not be encumbered, alienated, or let. May be terminated by the owner or per the agreement, and at death)
    - 3. **Use** - right similar to “license;” utility easements, right of passage, hunting rights; transferable and inheritable unless prohibited
  - B. **Predial** – This servitude involves two pieces of land, and the right is granted to one by the other (the servient estate). The right passes with the estate; that is, it “runs with the land”
    - 1. **Natural** – Created by the natural contour of the land. For example, the natural flow of water can’t be blocked
    - 2. **Legal** – Laws that require a property owner to keep his property in good repair so as not to harm the public; also, the right of party walls to extend over the property line
    - 3. **Conventional** – Any servitude created by contract or agreement. For example, a shared driveway
    - 4. **Prescriptive (acquisitive prescription)**
      - a. **Good faith** – 10 years with color of title
      - b. **Bad faith** – 30 years without color of title
  
- III. **Encroachments** – Unauthorized extensions over the property line
  - A. Trees
  - B. Fences
  - C. Driveways
  
- IV. **Building Restrictions**
  - A. Establishment of building restrictions - By seller at the time of sale, as in subdivision regulations prohibiting or requiring property owners to comply with certain restrictions
  - B. Enforcement of building restrictions
    - 1. **Mandatory injunctions**
    - 2. **Prohibitory injunctions**
  - C. Exemption from building restrictions - If property owner is in violation for 2 years without obligation, he is exempt from compliance
  - D. Termination or amendment of building restrictions
    - 1. Agreement of all owners at any time
    - 2. Agreement of owners of 2/3 of land and 2/3 of owners after 10 years
    - 3. Agreement of owners of over 1/2 of land after 15 years
  
- V. **Homestead Right:** Protects the homestead from some creditors. Do not confuse with the homestead exemption from property taxes
  - A. \$25,000 exemption
  - B. Usually waived in the mortgage

## Louisiana Civil Law – II

### HOW OWNERSHIP IS HELD

- I. **Sole Ownership** - title is vested in one person or entity. Called “ownership in severalty” under common law
  - A. Individual person - one person owns the property outright. This could be a single (unmarried) person or a married person who owns property separately from their spouse
  - B. Corporations - are essentially “artificial” people who may own property
- II. **Co-Ownership**
  - A. **Ownership in indivision** - this is similar to “tenancy in common” under common law
    1. Each owner has an undivided interest or share
    2. The shares (percentages) may be equal or unequal
    3. Upon death of a co-owner, the interest passes to their heirs
    4. Each owner has a separate title to his percentage
    5. Each owner may exercise all rights of ownership over his share without the consent of the other owners
    6. **Partition**: When co-owners are unable to resolve a dispute, it may result in a court ordered dissolution of an ownership in indivision
      - a. **Partition in kind** - the court orders the physical division of land according to each owner’s share. They are then each sole owners
      - b. **Partition by licitation** - the court orders the sale of property and divides the proceeds according to each owner’s share of the ownership
  - B. **Partnerships**
    1. **General partnerships**- if created in writing and filed with the Secretary of State, property is owned by the partnership; if not in writing, property is owned by the individual partners
    2. **Partnership in commendam** (limited partnership)
      - a. **General partners** - responsible for management; extensive liability
      - b. **Limited partners** - can’t be involved in management; limited liability
  - C. **Community property regime** – each party owns an undivided one half interest in the property, and may not encumber or alienate the property without the consent of the other party
    1. **Separate property** - acquired before marriage or during marriage by gift or inheritance. Property belongs to one spouse exclusively, as long as it is not commingled with community property
    2. **Community property** - acquired during marriage through effort of either party. Things are presumed to be community property until one spouse can prove otherwise. Earnings from separate property are community property unless otherwise understood
    3. **Marriage contracts** - can be used to modify the community/separate property relationship
      - a. **Pre-nuptial** – executed prior to marriage; no court approval needed
      - b. **Post-nuptial** – executed after marriage; court approval needed if Louisiana resident; no court approval needed for new resident if done within one year of establishing residency

### HOW OWNERSHIP IS TRANSFERRED WITHOUT AID OF THE REAL ESTATE BROKER

- I. **Donations Inter Vivos** - divestment while living
  - A. Types of donations inter vivos
    1. **Gratuitous** – a gift made without conditions being placed on the recipient. The donee is free to use the gift in any way he or she sees fit
    2. **Remunerative** – a donation to repay for services; the donation must exceed value of the services
    3. **Onerous** – a donation that is made with conditions that must be met. Failure to meet the conditions may result in return of the property
- II. **Succession** - transmission of an estate to one’s heirs
  - A. **Successors** - those who inherit
  - B. **Legatees** - testate successors
  - C. **Heirs** - intestate successors
  - D. **Testate succession (donation mortis causa)**
    1. Kinds of wills
      - a. **Notarial will** - typed, signed, notarized, witnessed, and dated
      - b. **Olographic will** - handwritten by testator, dated, and signed

2. **Forced heirship**

- a. **Forced heirs** - children or their descendants (legatees)
- b. Amount of decedent's estate that is forced (**legitime**) depends on the number of children or their descendants (legatees): One child - 1/4 forced, Two or more children - 1/2 forced
- c. **Disposable portion** - portion not forced
- d. **Usufruct of surviving spouse**
- e. Qualification for forced heirship
  - (1) Under 24
  - (2) Physical or mental impairment - no age limit if not independent
  - (3) Children may represent deceased parent as forced heir

E. **Intestate succession** - no will or testament

Order of Succession	
Community Property	Separate Property
1. To children or children's descendants, with usufruct to spouse	1. To children or children's descendants
2. To spouse, if there are no children or descendants of children	2. To brothers and sisters with usufruct to parents, if parents are alive
3. To brothers and sisters with usufruct to parents, if parents are alive	3. To nieces and nephews, or their descendants, with usufruct to parents, if parents are alive
4. To nieces and nephews, or their descendants, with usufruct to parents, if parents are alive	4. To parents if there are no brothers or sisters, nieces or nephews, or other descendants
5. To parents if there are no brothers or sisters, nieces or nephews, or other descendants	5. To spouse
6. To grandparents or other ascendants	6. To grandparents or other descendants
7. To nearest collateral relative	7. To nearest collateral relative
8. To state of Louisiana	8. To state of Louisiana

12 Reasons for Disinheritance
1. If the child has raised his or her hand to strike the parent, or if he or she has actually struck the parent, but a mere threat is not sufficient
2. If the child has been guilty of cruelty, a crime, or grievous injury towards a parent
3. If the child has attempted to take the life of either parent
4. If the child has accused the parent of any capital crime, except, however, that of high treason
5. If the child has refused sustenance to a parent, having means to afford it
6. If the child has neglected to take care of a parent who has become insane
7. If the child refused to ransom them, when detained in captivity
8. If the child used any act of violence or coercion to hinder a parent from making a will
9. If the child has refused to become security for a parent, having the means, in order to take him out of prison
10. If the son or daughter, being a minor, marries without the consent of his or her parents
11. If the child has been convicted of a felony for which the law provides that the punishment could be life imprisonment or death
12. If the child has known how to contact the parent, but has failed without just cause to communicate with the parent for a period of two years after attaining the age of majority, except when the child is on active duty in any of the military forces of the United States.

III. Transfer of Land by Natural Causes

- A. **Alluvion** - accretion formed on the bank of a river or stream
  - 1. For both navigable and non-navigable waterways
  - 2. Belongs to the owner of the bank
- B. **Dereliction** - formed by water receding from a river or stream
  - 1. Owner of land at the edge of the bank left dry owns the dereliction
  - 2. This right does not extend to the shore of seas or lakes
- C. **Sudden action of water** ("avulsion" in common law)
  - 1. Land is suddenly carried away
  - 2. After one year, owner may claim if owner of the other bank has not taken possession

IV. Public Power Over Property

- A. **Eminent domain**
  - 1. Use of power
    - a. Expropriation - authorized taking; highways
    - b. Appropriation - utility servitudes
  - 2. Compensation - all losses including actual damages and severance damages
  - 3. Quick taking
- B. **Escheat** - property reverts to the state if no heirs can be found
- C. **Taxation**
- D. **Police powers** - public health, zoning, construction codes, etc.

## Louisiana Civil Law – III

### OBLIGATIONS AND CONTRACTS

- I. Types of Contracts
  - A. **Unilateral** - one party obligated
  - B. **Bilateral** - both parties obligated
  - C. **Onerous** - each party obtains an advantage in exchange for his obligation
  - D. **Gratuitous** - one party obligated for the benefit of the other, but receives no return advantage
  - E. **Commutative** - the performance of the obligation of each party is correlative to the performance of the other
  - F. **Aleatory** - performance of either party depends on an uncertain event
  - G. **Null** - no legal force
  - H. **Relatively null** - can be rescinded by one party (minor, interdicts, etc.)
  
- II. Essential Elements Necessary to Form a Contract
  - A. **Legal capacity** - no minors, unless emancipated or for **necessaries of life**
  - B. **Mutual consent**
    - 1. **Offer**
      - a. Must be reasonably certain
      - b. Must be given freely and voluntarily
      - c. Must be communicated by offeror to offeree
      - d. Types of offers
        - (1) **Irrevocable** - any offer which specifies a time limit for acceptance is irrevocable during that time
        - (2) **Revocable** - any offer not stated to be irrevocable may be withdrawn at any time prior to its acceptance
        - (3) Any offer expires by the death or incapacity of either party
    - 2. **Acceptance**
      - a. Defined as: agreement to the terms of the offer and a freely given expression of an intent to be bound by the exact terms of the resulting contract
      - b. Adding to, or altering the terms of the offer, constitutes a counteroffer
      - c. Effective acceptance of offer:
        - (1) Irrevocable offer - when received by offeror
        - (2) Revocable offer - when acceptance is transmitted by offeree, unless specified otherwise
      - d. Revocation of offer is effective when received by the offeree prior to acceptance
      - e. Acceptance of offer is vitiated (voided) by error, fraud, or duress
      - f. Counteroffer - negates the original offer
  - C. **Cause**
    - 1. The reason why a party obligates himself
    - 2. This is not the same as consideration in common law states
  
- III. Remedies for Breach of Contract
  - A. Parties to contract can elect in their contract the remedies available to the aggrieved party in the event of a breach of contract
  - B. The available legal remedies include
    - 1. Specific performance
    - 2. Suit for damages
    - 3. Earnest money
      - a. If a deposit accompanies an offer, the contract must specify if it is to be considered earnest money
      - b. If the deposit is stated as not earnest money, or if the offer does not contain a deposit, then either party can demand specific performance or damages

## SALES (Conveyances)

- I. **Conveyance (Deed)** - must be written
  - A. **Authentic act**
    - 1. Executed and signed by each party and two witnesses before a notary as full proof
    - 2. Party may affix his mark if he does not know how to sign
    - 3. If a party is blind, there must be three witnesses
  - B. **Act under private signature**
    - 1. Must be signed by the parties
    - 2. Must be acknowledged to be full proof
  
- II. Transfer of Title Effective
  - A. Between parties - upon proper execution
  - B. Third parties - from time of registry in conveyance records of parish in which property is located
  
- III. **Lesion Beyond Moiety**
  - A. Less than 50% of property value on date of sale
  - B. One year to reclaim property
  
- IV. Types of Sales (Conveyances)
  - A. **Sale with warranty**
    - 1. Seller warrants buyer's peaceable possession
    - 2. Seller warrants against any undeclared, non-apparent servitudes
    - 3. Seller warrants that there are no latent or undisclosed vices (defects) in the thing sold - **redhibitory vices**
    - 4. Purchaser has the right to sue under redhibition to avoid the sale entirely, or to be compensated for the cost to correct the vice
    - 5. Purchaser must prove that the defect pre-existed the sale, that the defect is substantial, was unknown, and was not apparent to him
    - 6. Time limits for redhibition
      - a. If the seller did not know of the defect - within 4 years from the date of delivery, or within one year of the date of his discovery, whichever occurs first
      - b. If the seller knew of the defect - within one year from the date of discovery of the defect
  - B. **Sale without warranty (quitclaim)**

# Louisiana Civil Law – IV

## PRIVILEGES AND MORTGAGES

### I. Liens (also called “privileges”)

- A. **Mechanic’s lien**, workman’s lien, and materialman’s lien
  - 1. Eligibility - must provide material or services to property
  - 2. Time limit for filing - 60 days after last work
- B. **Vendor’s lien** - the same as a “purchase money mortgage”
- C. Mortgage
  - 1. **Conventional** - contracted mortgage, as in a home purchase
  - 2. **Legal** - such as the tacit (implied) lien on property of a tutor to protect the interdicts he oversees
  - 3. **Judicial** - results from a recorded monetary judgment (**after acquired doctrine**). Judgments will affect immovables they later acquire
  - 4. Transferring mortgages
    - a. **Assumption** - buyer becomes liable if a specific release is obtained
    - b. **“Subject to”** - buyer is not liable
  - 5. **Foreclosure**
    - a. **Ordinary process** - lengthy process.
      - Briefly: a) Mortgagee (lender) files suit against mortgagor (borrower)
      - b) A trial is held and judgment issued
      - c) Judgment executed by the sheriff by seizing and selling the property
    - b. **Executory process** - direct court order; short process. Mortgagor signs “confession of judgment” waving various rights and agreeing to executory process and property sold quickly. Generally not permitted in first mortgages.
    - c. **Deficiency judgment** - results from insufficient proceeds from sale at foreclosure
      - (1) **Sale with appraisal** - 2/3 of value required to get deficiency judgment
      - (2) **Sale without appraisal** - no deficiency judgment allowed
    - d. **Dation en paiement** - “giving in payment” to avoid foreclosure
  - 6. **Usury** - charge a rate of interest in excess of that allowed by law
    - a. Owner financing
    - b. Penalty is forfeiture of the entire interest

### II. Property Tax

- A. Types of property tax
  - 1. **Ad valorem** - tax on immovable property based on the value of the real estate being taxed
  - 2. **Special assessment** - tax levied according to the cost of an improvement, rather than the value of the property being taxed
- B. Calculations of property tax
  - 1. **Assessed value** - all property taxes are based on a percentage of the actual value of the property
  - 2. Assessment rate:

Class	% of Fair Market Value Used to Calculate Taxes
1. Land	10%
2. Residential Improvements	10%
3. Electrical Co-ops	15%
4. Public Service Property	25%
5. All Other Property	15%

- 3. **Millage rate** - taxes are calculated in mills; 1 mill = \$.001      10 mills = \$.010
- 4. **Homestead exemption** - created in 1934 to encourage home ownership. It has increased steadily to present level of \$7,500. This means \$7,500 of assessed value of owner occupied property is exempt from parish taxes

**NOTE:** Except for Orleans parish, the homestead exemption does not apply to municipal taxes

### Sample Tax Calculation

Given: Property with fair market value of \$250,000, residential property with homestead exemption, millage = 115 mills parish, 47 mills municipal

	<b>Parish</b>	<b>Municipal</b>
Market Value	\$250,000	\$250,000
Assessment Rate	X 10%	X 10%
Assessed Value	\$25,000	\$25,000
Homestead Exemption Applied	(\$7,500)	\$ 0
Assessed Value for Taxes	\$17,500	\$25,000
Millage	X .115	X .047
Tax	\$2,012.50	\$1,175

**TOTAL \$2,012.50 + \$1,175 = \$3,187.50**

- C. Assessors- Each Parish has one assessor, except Orleans, which has seven.
- D. Tax Collection- In advance except for Orleans Parish, which is in arrears
- E. Tax Sale
  - 1. If property tax is not paid, property will be seized and sold for taxes
  - 2. There is a 3 year redemption period during which time the property can be redeemed for taxes
  - 3. Property tax lien primes (supersedes) all other liens

### LEASES

#### I. Parties

- A. **Lessor** - the one who gives the lease to the tenant, usually the property owner
- B. **Lessee** - the tenant or recipient of the lease
- C. The lease
  - 1. Should be written, but not required in Louisiana
  - 2. Leases of any length can be oral, but oral leases require the burden of proof
  - 3. Leases are either "**farm**" or "**non-farm**"
    - a. Farm - lease on a farm or agricultural property. In the absence of a lease, usually for one year
    - b. Non-farm - lease on non-farm property. In the absence of a lease, usually month-to-month
  - 4. If a lease does not specify otherwise, the notice required to terminate the lease is as follows:
    - a. Month-to-month: 10 days
    - b. Year-to-year: 30 days

#### II. Lessor's Privilege

- A. Lessor has the right to seize certain items from the premises if rent is not paid - can't take cooking utensils, bed linens, tools of the trade, clothing, musical instruments
- B. Property can be seized and sold even if it belongs to a third party
- C. Third party can recover his property through proper legal action before the judicial sale
- D. Lessor can seize property, even if removed from the premises, if he does so within 15 days of removal

#### III. Eviction

- A. Lessee can be expelled for non-payment of rent or violation of the terms of the lease
  - 1. If lessee did not waive his right of notice and lease does not provide otherwise, the notice to vacate is 5 days
  - 2. Special laws apply to eviction proceedings
- B. Lessor has a duty to minimize his losses if tenant leaves during term of lease by finding a new tenant as quickly as possible



#### IV. Security Deposits

- A. Lessor can require a security deposit to ensure against losses
- B. Lessor is required to return security deposit within 30 days of lease termination
  - 1. Lessor can deduct for wear and tear to the property
  - 2. Lessor must give tenant itemized statement of any money not returned
  - 3. If tenant abandons the property without notice, the lessor may retain the deposit without itemizing expenses to the tenant
  - 4. Willful violation by not returning deposit allows tenant to recover the greater of actual damages, or \$200 plus attorney fees and court costs
  - 5. If property is sold, the deposit must be given to the new purchaser to hold for the tenant

## LOUISIANA AGENCY LAWS

### I. Agency Provisions

#### A. Definitions

1. **Agency** - a relationship in which a real estate broker or licensee represents a client by the client's consent, whether express or implied, in an immovable property transaction
2. **Brokerage agreement** - an agreement for brokerage services to be provided to a person in return for compensation, or the right to receive compensation from another
3. **Client** - one who engages the professional advice and services of a licensee as his agent
4. Confidential information
  - a. Information obtained by a licensee from a client during the term of a brokerage agreement that was made confidential by the written request, or written instruction of the client, or is information, the disclosure of which could materially harm the position of the client, unless at any time any of the following occurs:
    - (1) The client permits the disclosure by word or conduct
    - (2) The disclosure is required by law, or would reveal a serious defect
    - (3) The information becomes public from a source other than the licensee
  - b. Confidential information shall not be considered to include material information about the physical condition of the property
  - c. Confidential information can be disclosed by a designated agent to his broker for the purpose of seeking advice or assistance for the benefit of the client
5. **Customer** - a person who is not being represented by a licensee, but for whom the licensee is performing ministerial acts
6. **Designated agency** - a contractual relationship between a broker and a client, under which one or more licensees affiliated with the broker are designated as agents of the client
7. **Designated agent** - a licensee named by a broker as the agent of a client
8. **Dual agency** - an agency relationship in which a licensee is working with both the buyer and seller, or both the landlord and tenant in the same transaction
  - a. Such a relationship shall not constitute dual agency if the licensee is the seller of the property that he owns, or if the property is owned by a real estate business of which the licensee is the sole proprietor and agent
  - b. A dual agency relationship shall not be construed to exist in a circumstance in which the licensee is working with both the landlord and tenant as to a lease which does not exceed a term of three years and the licensee is the landlord
9. **Ministerial acts** - those acts that a licensee may perform for a person that are informative in nature. Examples of these acts include, but are not limited to:
  - a. Responding to phone inquiries by persons as to the availability and pricing of brokerage services
  - b. Responding to phone inquiries from a person concerning the price or location of property
  - c. Conducting an open house and responding to questions about the property from a person
  - d. Setting an appointment to view property
  - e. Responding to questions from persons walking into a licensee's office concerning brokerage services offered, or particular properties
  - f. Accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property
  - g. Describing a property, or the property's condition, in response to a person's inquiry
  - h. Completing business, or factual information, for a person represented by another licensee on an offer or contract to purchase
  - i. Showing a person through a property being sold by an owner on his or her own behalf
  - j. Referral to another broker or service provider
10. **Vicarious liability** - client is not liable for the acts or omissions of a licensee in providing brokerage services for, or on behalf of, a client

#### B. A licensee representing a client shall:

1. Perform the terms of the brokerage agreement between a broker and the client
2. Promote the best interests of the client by:
  - a. Seeking a transaction at the price and terms stated in the brokerage agreement, or at a price and upon terms otherwise acceptable to the client
  - b. Timely presenting all offers to and from the client, unless the client has waived this duty
  - c. Timely accounting for all money and property received in which the client has, may have, or should have an interest
3. Exercise reasonable skill and care in the performance of brokerage services

#### C. Louisiana operates under designated agency

#### D. Broker assigns agent to seller or buyer

#### E. Listing agent is designated as seller's agent

- F. Agent showing property is designated as buyer's agent
- G. Dual agency is only permitted with authorization from both buyer and seller
- H. **Dual agency disclosure form** is required to be a dual agent
- I. Agency brochure must be given to buyer and seller at first face-to-face contact
- J. Agent must keep record for **5 years** that buyer and seller received agency brochure
- K. Broker may designate a new agent at any time
- L. Designated agent must keep information about client confidential
- M. Payment, or promise of payment of compensation to a broker, is not deterministic of whether an agency relationship is formed
- N. **Subagency** is only created by a written agreement

II. Other Considerations

A. **Bond for deed**

1. Similar to contract for deed, installment sale, and land contract
2. Definition
  - a. Contract to sell immovable property
  - b. Purchase price is to be paid by the buyer to seller in installments
  - c. Buyer takes possession, but title is delivered after payment of a stipulated sum
  - d. Provisions for eviction: upon 45 days notice after the buyers default in payments, the bond for deed may be cancelled.

B. **Exchanges**

1. Contract in which parties give to each other a thing other than money
2. If immovable property is exchanged for movable property not worth 1/2 the value of the immovable, the giver of the immovable may demand rescission
3. The one giving the movable may not demand rescission, even if things given by him were worth twice as much as the immovable

C. **Right of first refusal**