

# Broker Responsibilities

## Course Outline

### I. Legislation

**A. Federal Truth in Lending Act of 1969 (Regulation Z). The Federal Consumer Credit Protection Act is regulated by the Federal Trade Commission and is designed to insure that consumers are given the necessary facts about a credit transaction before they obligate themselves.**

1. Truth in Lending applies to:
  - a. Transactions that require more than four installments.
  - b. Transactions that have finance charges (interest points).
  - c. Individuals that finance more than 5 dwellings in a single year.
2. Truth in Lending does not apply to:
  - a. Transactions that have less than four installments or no interest.
  - b. Commercial and Agricultural loans.
  - c. Consumer Personal Property loans of over \$25,000 (unless it's a dwelling).
  - d. Mortgage brokers and real estate agents, unless they take their commissions in the form of notes.
3. The Disclosure Statement
  - a. Must be given to borrower within three days of application.
  - b. Must contain 18 disclosures.
  - c. Four disclosures must be emphasized.
    1. Amount financed = the credit being granted.
    2. Finance charges = any points, extra fees, credit life insurance, etc.
    3. Annual Percentage Rate (APR) must include interest points, etc. It is a blend of all charges to show a more accurate cost for the loan.
    4. Total of all payments - the number of payments required multiplied by the amount of the payment.
4. Disclosures in Advertising Credit
  - a. Advertising that does not trigger disclosure requirements.
    1. Price of product (home price \$85,000).
    2. General statements
      - a. "Low down payment"
      - b. "Easy terms available"
      - c. "FHA/VA financing available"
    3. The APR used by itself.
  - b. Advertising that does trigger disclosure.
    1. "\$1,000 down" or "No money down"
    2. "\$500 per month"
    3. "360 payments"
    4. No charges for credit (interest free)
  - c. The following must be given if disclosure has been triggered.
    1. Annual Percentage Rate (not just APR alone).
    2. Cash price or loan amount.
    3. Amount and number of payments.
    4. The deferred payment price (except for first mortgages).
  - d. The right of rescission.
    1. Within three business days.
    2. Does not apply to mortgages used to purchase the property.
  - e. Attorney's fees do not have to be entered in disclosure materials.
5. Penalties for non-compliance - \$10,000 (check present law).

## **B. Real Estate Settlement Procedures Act**

1. RESPA is designed to standardize and simplify the real estate settlement process.
  - a. RESPA only regulates the federally related lenders.
    1. Lenders who originate FHA/VA loans.
    2. Lenders with federally insured deposits (FDIC or FSLIC).
    3. Lenders who sell loans to FNMA, GNMA, and FHLMC.
    4. Lenders originating more than a \$1,000,000 in residential loans a year.
  - b. RESPA only applies to residential real estate transactions.
    1. One to four family residences.
    2. Only first mortgages.
    3. Nothing commercial is covered.
2. RESPA requires the following of lenders:
  - a. Buyers must be provided with:
    1. Good faith estimate of costs.
    2. "Settlement Cost and You" booklet.
  - b. No overcharging on escrow accounts.
  - c. Lender must use the "HUD-1" uniform statement and make it available one day prior to the act of sale.
  - d. Lender cannot pay "kickbacks."
    1. Finder's fees.
    2. Unearned fees.
  - e. Lender cannot require that a particular title company be used as a condition for granting the loan.

## **C. Equal Credit Opportunity Act of 1974 - Prohibits discrimination purely on the basis of race, creed, color, national origin, sex, or marital status; All incomes must be considered.**

- a. Spouse or co-borrower.
- b. Social Security, child support, etc.

## **D. Louisiana Condominium Act (R.S. 9:1121.101) - originally enacted as the Horizontal Property Act.**

1. Definitions:
  - a. Condominium - the property regime under which portions of the immovable property are subject to individual ownership and the remainder thereof is owned in division by such unit owners.
  - b. Unit - a part of the condominium property subject to individual ownership.
    1. May include air space only.
    2. Does include such accessory rights and obligations as are stipulated in the condominium declaration.
  - c. Common elements - the portion of the condominium property not a part of the individual units.
  - d. Limited common elements - those common elements reserved in the condominium declaration as being for the exclusive use of certain unit or units.
  - e. Association - a corporation, or unincorporated association, owned by or composed of the unit owners and through which the unit owners manage and regulate the condominium.

- f. Leasehold condominium - a condominium in which all or a portion of the condominium property is subject to a lease, the expiration or termination of which will terminate the condominium or reduce its size.
2. Creation of Condominium Regimes:
  - a. Established by the execution of a condominium declaration by the owner of the immovable property to be conveyed and also by every lessor of a lease whose expiration or termination would terminate or reduce the size of the condominium.
  - b. The declaration, and any subsequent instrument terminating or altering the condominium, shall become effective against third parties when filed for registry in the conveyance records in the parish in which the property is located.
3. Condominium Declaration; Contents:
  - a. The condominium declaration **MUST** contain:
    1. A statement submitting the property into a condominium regime.
    2. The name of the condominium - name must contain the word(s) "condominium" or "a condominium."
    3. A legal description of the land.
    4. Identification of each unit by letter, name, number, or combination thereof.
    5. Written description delineating the precise boundaries of each unit and any limited common elements appurtenant thereto.
    6. The amount, stated in percentages or fractions, of the undivided shares in the common elements each unit enjoys.
    7. The portion and manner of sharing common expenses and owing of any surplus.
    8. The proportionate voting rights of the unit owners in the Association.
    9. The method of amending the declaration.
    10. A plat of survey of land and plans of the proposed or existing improvements.
    11. A statement setting fourth the reappointment of the percentage of ownership interest in the common elements, should additional units and/or common elements be added to the condominium regime.
    12. Policy regarding the reconstruction or repair of any or all condominium property after casualty loss.
    13. The name and type of legal entity of the Association.
    14. The procedure for collecting from the unit owners their respective shares of common expenses assessed.
  - b. The condominium declaration **MAY** contain other provisions, such as:
    1. Procedures for removing damaged or destroyed units from the condominium regime.
    2. The purposes for which the condominium units are intended.
    3. Use restrictions.
    4. Limitations upon conveyance, sale, leasing, ownership, and occupancy of units.
    5. Designation of limited common elements.
3. Powers and Duties of Unit Owner's Association:
  - a. Adopt and amend bylaws and rules and regulations.

- b. Adopt and amend budgets and collect common expenses from unit owners.
  - c. Hire and terminate managing agents and other employees, agents, and independent contractors.
  - d. Institute, defend, and intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting units or common elements.
  - e. Make contracts and incur liabilities.
  - f. Regulate the use, maintenance, repair, replacement, and modification of common elements.
  - g. Make improvements to be added to the common elements.
  - h. Acquire personal property.
  - i. Grant easements, leases, licenses over common elements.
  - j. Impose fees or charges for use of common elements, excluding limited common elements.
  - k. Impose charges for late payment of unit assessments and levy fines for violation of declaration, bylaws, and rules and regulations of the condominium regime or Association.
4. Protection of Purchasers:
- a. Prior to the INITIAL sale or execution of a sales contract, a condominium unit purchaser must be provided with the public offering statement containing and disclosing:
    - 1. A copy of the condominium declaration.
    - 2. A copy of the documents creating the Association.
    - 3. A copy of the bylaws of the Association.
    - 4. A copy of any leases affecting the condominium property.
    - 5. A statement as to whether the developer or owner, directly or indirectly, is or intends to manage a portion or all of the condominium.
    - 6. A projected operating budget of the Association for the one year period after the first conveyance of a unit, including monthly charges for:
      - a. Maintenance
      - b. Management
      - c. Reserves the replacement
      - d. Charges for use of recreation facilities
      - e. Insurance coverage amounts and charges
    - 7. A diagram of the floor plan of unit.
    - 8. A statement as to any unsold units not being charged assessments for common elements.
    - 9. A statement as to any unsatisfied judgments or pending suits against the condominium or Association.
    - 10. The terms of any warranties expressly made or limited by the developer/owner.
    - 11. A statement that within 15 days of receipt of a public offering statement, a purchaser, before conveyance, may cancel any contract to purchase the unit.
  - b. In the event of RESALE of a unit by a unit owner, the owner shall furnish to a purchaser, before any execution of any contract, or otherwise before conveyance, the following:
    - 1. A copy of the condominium declaration.
    - 2. A copy of the instrument creating the Association.
    - 3. A certificate containing:
      - a. A statement of current common expense assessments.

- b. A statement of any capital expenditures approved by the Association for the current and two next succeeding fiscal years.
  - c. A statement of the amount of any reserves for capital expenditures and any portion designed for specific projects.
  - d. A copy of the most recent balance sheet and income/expense statement of the Association, if any.
  - e. The current operating budget of the Association, if any.
  - f. A statement of any unsatisfied judgments and/or suits affecting the condominium or Association.
  - g. A statement describing any insurance coverage provided by the Association.
  - h. A statement of the remaining term of any ground lease affecting the condominium and provisions governing any renewal or extension.
- c. In the event of the INITIAL SALE of a unit in a building containing ten (10) or more units CONVERTED to a condominium form of ownership, the following information (in addition to that required for INITIAL SALES OF NEW CONDOMINIUMS) is required:
- 1. A report prepared by a registered architect or engineer regarding the present condition of all structural components, roof, mechanical, and electrical installations which are essential to the use and enjoyment of the condominium.
  - 2. A statement of the estimated remaining useful life of each item covered in the architect/engineer's report or a statement that no such representations are being made.
  - 3. A statement of any outstanding notices of incurred violations of building codes or other municipal regulations, together with the estimated cost of curing those violations.

**E. Louisiana Timeshare Act (R.S. 9:1131.1)**

- 1. Creation of a Timeshare Plan:
  - a. No person shall offer for sale, sell, or solicit for the sale of a timeshare interest in property located in Louisiana unless it is pursuant to a timeshare plan.
  - b. A timeshare plan shall be created, prior to the sale of any interest, in the following manner:
    - 1. Execution and recordation of a timeshare declaration in the conveyance records in the parish where the property is located, and
    - 2. Registration of the timeshare with the Louisiana Real Estate Commission (LREC).
  - c. It is the responsibility of the timeshare developer to supervise, manage, and control all aspects of the offering of the timeshare plan including:
    - 1. Promotion
    - 2. Advertising
    - 3. Contracting
    - 4. Closing
  - d. Any violation of this law shall be deemed to be a violation by the developer as well as the person actually committing the violation.
- 2. Timeshare Declaration MUST contain:
  - a. A legally sufficient description of the timeshare property.
  - b. A scale drawing showing boundaries of all units.
  - c. A schedule of all use periods per unit.

- d. If timeshare may be increased, the method of doing so and the formula for re-allocation of timeshare interest expenses and voting rights.
  - e. Any restrictions on the use of alienation of the timeshare interest.
  - f. The method for amendment of the timeshare.
  - g. The term of the timeshare.
  - h. If the timeshare is on leased property, all information pertinent to same
  - i. Name of the developer or any other parties having interests or contracts pertaining to the timeshare.
  - j. A surety bond in for each unit week included in the timeshare must accompany the timeshare declaration filed with the Louisiana Real Estate Commission.
  - k. An affidavit(s) signed by the chief officer or managing partner of developer, and all parties having an interest exceeding 10% in the timeshare property stating under penalty of perjury (5 years in jail and/or \$5,000 fine), that the timeshare declaration is true and complete.
3. Public Offering Statements:
- a. Prior to offering any timeshare interest, shall file a public offering statement with the Louisiana Real Estate Commission for approval.
    - 1. Within 60 days of receipt, the Louisiana Real Estate Commission shall determine if it is adequate to meet the legal requirements and shall notify developer of approval or deficiencies needing correction.
    - 2. Developer then has 60 days from notice to correct deficiencies and resubmit.
    - 3. Within 45 days of receipt of corrections, the Louisiana Real Estate Commission shall notify developer of approval or additional specified deficiencies discovered.
  - b. Once the public offering statement is approved, developer MUST furnish each purchaser with a copy of the approved public offering statement.
  - c. Seller is prohibited from making any representations other than those contained in the timeshare declaration and the public offering statement.
  - d. Any purchaser who receives a public offering statement that does not substantially comply with the legal requirements or who relies on a materially misleading statement shall have additional legal rights to sue for damages for five years following the date of the conveyance.
4. Requirements for Contract of Sale: the seller of a timeshare MUST furnish each purchaser with a fully completed copy of any sales contract which shall include, or be accompanied by:
- a. The actual date the contract was executed by both parties.
  - b. Names and addresses of developer and any owners of the underlying real estate timeshare plan.
  - c. The total financing obligation of the purchaser, including initial purchase price and any additional charges to which the purchaser may be subject.
  - d. The estimated completion date of any construction not completed.
  - e. A statement describing the nature and duration of the timeshare interest being sold.
  - f. Included in the sales contract in CONSPICUOUS PRINT, must be a statement of the purchaser's right to cancel the sales contract without any penalty within 10 days from the date that purchaser signs the contract, and until 10 days after receiving the public offering statement, whichever is later.
5. Advertising:
- a. No person may intentionally, directly, or indirectly, use advertisement or promotion which is false, misleading, or without substantiation.

- b. All advertising must be submitted to the Louisiana Real Estate Commission by the developer prior to its use.
- c. The developer must file each prize and gift promotional offer with the Louisiana Real Estate Commission prior to its use.
- 6. Resales of Timeshares:
  - a. A seller of a timeshare interest in property located in Louisiana shall furnish to the purchaser, before the execution of any sales contract, or prior to the closing of the sale:
    - 1. A copy of the timeshare documents (including plats and plans).
    - 2. A certificate containing:
      - a. A statement disclosing the effect on the sale of any right of first refusal or other restraint on the transfer.
      - b. A statement as to the amount of any expense or fee assessments affecting the unit being sold.
      - c. A statement of judgments or other matters that may become privileges against the unit, interest, or share being sold.
  - b. The managing entity shall furnish the owner, within 10 days after request, the information necessary to enable the timeshare owner to comply with these requirements:
    - 1. A purchaser is not liable for any unpaid expense liability or fee greater than the amount set forth in a certificate prepared by the managing entity.
    - 2. An owner shall not be liable to a purchaser for failure or delay of the managing entity to provide the certificate in a timely manner.
    - 3. The contract of sale is voidable by the purchaser until the certificate has been delivered to him or her.

**F. Louisiana Certified Real Estate Appraisal Law (R.S. 1950 Title 37, Chapter 51)**

- 1. Certification Required - no person, other than a state certified real estate appraiser, shall assume or use that title or any title likely to create the impression of being a state certified real estate appraiser.
  - a. A person not certified shall not describe or refer to any appraisal or other evaluations of real estate in Louisiana by using the term "certified."
  - b. This law shall not preclude someone who is not state certified from appraising real estate for compensation.
- 2. Real Estate Appraisal Sub-Committee
  - a. Shall consist of nine members.
    - 1. Appointed by governor.
    - 2. One shall be appointed from each congressional district and one at large.
  - b. Members must meet the following qualifications:
    - 1. Residents of Louisiana.
    - 2. Engage in the general practice of real estate appraising in Louisiana for not less than five years preceding appointment.
    - 3. At least six members must be general appraisers (appraised all types of real estate).
    - 4. Members appointed must be state certified.
    - 5. At least eight members must be designated members of a national appraisal organization.
    - 6. Each appointment must be confirmed by the Senate.
- 3. Powers of the Sub-Committee
  - a. Established educational programs and research projects related to real estate appraisal.

- b. Establish procedures for the application and issuance of state certifications.
  - c. Establish procedures for conducting disciplinary proceedings.
  - d. Given sole authority to determine who meets the criteria for certification.
  - e. Given sole power to renew, censure, suspend, or revoke certifications.
  - f. Given power to adopt regulations as to accepting experience toward qualifying for certification.
  - g. Given power to adopt regulations providing for continuing education required to renew certifications.
  - h. Given power to adopt standards for the development and communication of real estate appraisals.
  - i. Any other functions necessary to carry out the law.
4. Classes of Certification:
- a. Residential appraisal certification - those persons certified solely to appraise one to four unit properties.
  - b. General appraisal certification - those persons certified to appraise all types of real property.
5. Requirements for Certification:
- a. Pre-certification - experience/education requirements:
    - 1. Residential certification - two years experience in real estate appraising acquired within the five year period immediately preceding the application and either:
      - a. Has a college degree.
      - b. Has successfully completed not less than 60 classroom hours in subjects related to real estate appraising from a nationally recognized appraisal organization, or a college or university approved by the sub-committee.
    - 2. General certification - three years experience in real estate appraising acquired within the five year period immediately preceding the application and either:
      - a. Has a college degree.
      - b. Has successfully completed not less than 120 classroom hours in subjects related to real estate appraisal from a nationally recognized appraisal organization or a college or university approved by the sub-committee.
  - b. Continuing education requirements - as a prerequisite of renewing any certification, a state certified appraiser shall meet one of the following continuing education requirements:
    - 1. Completion of not less than 30 classroom hours of instruction in courses approved by the sub-committee.
    - 2. In lieu of meeting the above requirement, an applicant for renewal may present evidence of the following:
      - a. Completion of a course study determined by the sub-committee to be equivalent to courses approved for continuing education by the sub-committee.
      - b. Participation, other than as a student, in educational programs or activities relating to appraisal as approved by the sub-committee.
6. Terms of Certification:
- a. Each certificate shall be for two years, expiring on the second December 31st following the issue date.
  - b. Any certificate holder who fails to renew timely may renew thereafter upon payment of a delinquent renewal fee, but only during the two year certification period immediately following the last date on which the applicant held a valid certificate.

- c. Former certificate holders who delay beyond the two year delinquent period shall apply as and meet all the requirements of initial applicants.
7. Non-resident Certification:
- a. Every applicant who is not a resident of Louisiana shall submit with their application, an irrevocable consent that service of process of any legal action related to the applicant's appraisal activities in Louisiana, may be made by delivery of process to the Secretary of State.
  - b. Non-residents of Louisiana may make appraisals in Louisiana only if state certified or working and signing with a state certified real estate appraiser, and sharing with the state certified appraiser, at least fifty percent of the total appraisal fees.
8. Causes for Censure, Suspension, or Revocation of Certifications:
- a. Procuring a certification by fraud or misrepresentation.
  - b. Failing to meet the minimum qualifications as set forth in the law.
  - c. Paying money or other valuable consideration to anyone to procure a certification.
  - d. Conviction of a crime substantially related to, or affecting a certificate holder's appraisal activities.
  - e. A fraudulent, dishonest, or misleading act committed with the intent to benefit the certificate holder, or another person, or to injure another person.
  - f. Violations of any of the standards for the development or communication of real estate appraisals set forth in this law.
  - g. Failure or refusal without just cause to exercise reasonable diligence in developing, preparing, or communicating an appraisal.
  - h. Negligence or incompetence in developing, preparing, or communicating an appraisal.
  - i. Willfully disregarding or violating any provisions of this law or regulations adopted by the sub-committee.
  - j. Accepting an appraisal assignment wherein the assignment is based upon the appraisal containing a predetermined value for the property.
  - k. Violating the confidential nature of government records obtained, if employed by a government agency.
  - l. Violating any term or condition of a certificate issued by the sub-committee under this law.
9. Documents to be Retained:
- a. Certified appraisers must retain for five years:
    - 1. Original or true copies of all contracts engaging the appraiser's services.
    - 2. All supporting documentation assembled and formulated by the appraiser in preparing reports.
  - b. When litigation is contemplated at any time, reports and records shall be retained for two years after the trial date.
  - c. Records shall be available for inspection and copying by the sub-committee on reasonable notice to the appraiser.
10. Fraud in Application or Examination for Certification:
- a. It shall be unlawful for any person to practice any deception or fraud in connection with the application or examination for certification.
  - b. Violators shall be subject to a fine of not more than \$500 or imprisonment for not more than six months, or both.

## II. Operating a Brokerage Firm

### A. Opening an Office

1. Real estate brokerage license - there are three different licenses issued by the Louisiana Real Estate Commission that conform with the type of entity the real estate firm intends to operate.
  - a. Individual license - this would be for an individual who does not operate under entity of corporation, partnership, or "exclusive affiliation."
    1. The Louisiana Real Estate Commission requires:
      - a. Application.
      - b. Escrow account affidavit.
      - c. Current written credit report.
      - d. Written acknowledgment by present broker, having knowledge that salesperson is applying for broker license.
      - e. Evidence of 150 hours of instruction in approved school.
      - f. Fee for the application.
      - g. Testing service application.
      - h. Copy of high school or equivalency certificate.
  - b. Corporation and partnership licenses:
    1. The Louisiana Real Estate Commission requires:
      - a. Application.
      - b. Escrow account affidavit.
      - c. Current written credit report ("managing broker").
      - d. Written acknowledgment by present broker, having knowledge that salesperson is applying for broker license.
      - e. Evidence of 150 hours of instruction in approved school.
      - f. Fee for the application.
      - g. Testing service application.
      - h. Copy of high school or equivalency certificate.
      - i. Copy of articles of incorporation or partnership.
      - j. Recording evidence by Clerk of Court and Secretary of State for corporation and partnership.
  - c. Individual license of applicant who desires exclusive affiliation:
    1. The Louisiana Real Estate Commission requires:
      - a. Application.
      - b. Current written credit report.
      - c. Written acknowledgment of broker ("present" broker of the salesperson), having knowledge that the salesperson is applying for broker license.
      - d. Written acknowledgment of broker ("future" broker of the salesperson), having knowledge that the salesperson will be an associate broker after meeting all requirements to be a broker.
      - e. Evidence of 150 hours of instruction in approved school.
      - f. Fee for the application.
      - g. Testing service application.
      - h. Copy of high school or equivalency certificate.
2. Licenses and Applications Required for a New Firm.
  - a. Occupational license - Occupational license has to be acquired for the building, or part of building, the real estate firm intends to occupy from city and/or parish office.

- b. Federal Identification Number - If broker intends to operate office as individual, corporation, or partnership, application has to be made with IRS of Identification Number (Form SS-4).
  - c. Louisiana State Identification Number - A central registration application - "Louisiana State Taxes" has to be filed with Department of Revenue and Taxation (Form CR-1).
  - d. Department of Labor - If salaried employees will be employed, application has to be made with State of Louisiana Department of Employment and Training.
  - e. Housing and Urban Development - Application has to be made to HUD, 701 Loyola Avenue, New Orleans for "Compliance Agreement" for the real estate firm with HUD.
3. Escrow Accounts - When a real estate firm applies for a license with the Louisiana Real Estate Commission, an escrow account needs to be opened in a non-interest bearing checking account in the parish the firm is located, and should be styled similar to: "Baton Rouge Realty - Sales Escrow Account." The initial deposit cannot be larger than \$500. When the real estate firm is engaged in rental management, an additional account has to be opened, for example: "Baton Rouge Realty - Rental Trust Account." Additional accounts can be opened when a branch office has been opened (in another bank in a parish where the branch office is located). When accounts are opened, the real estate firm shall forward an affidavit to the Louisiana Real Estate Commission. In order to comply with the instruction of the Investigation Department of the Louisiana Real Estate Commission, a formal accounting record shall be kept for easy audit by the Louisiana Real Estate Commission. (See Addendum)
  4. Office Site Selection - One of the most important decisions for a successful real estate operation is the selection of the site for the office. This is particularly true in a medium to large city. "Most real estate transactions are done within 5 miles of the real estate office." During the search for the location, the following items should be considered:
    - a. Is the office zoned properly?
    - b. Will the office space be suitable for the future?
    - c. Do we have sufficient parking?
    - d. Can the prospective clients "find us?"
    - e. What about telephone service?
    - f. Can we place the sign on the building we have planned to use?
    - g. Is the building in a secure area after dark?
    - h. If part of a larger building; are janitorial services included?
  5. Staff
    - a. Secretary.
      1. Particularly in a small office, the correct choice of secretary is most important. (An unlicensed secretary cannot give data over the telephone or in person on any listings).
      2. As in most office help, experience is the best. Proper filing, recording of messages, etc., might make the difference in gaining a client or losing one.
    - b. Accountant - The choice of a full time or part time accountant can be very helpful for the success of the real estate firm. Many firms have failed because of improper accounting records or none at all.
  6. Recruiting Salespeople
    - a. Inexperienced salespeople - Salespeople just completing the real estate school, and the Louisiana Real Estate Commission authorized examination, have some advantages and disadvantages, such as:

1. No experience.
  2. No bad habits.
  3. Need training.
  - b. Experienced salespeople
    1. Should be "self-starters."
    2. Do not have to take as much time for training.
    3. Have created "a following" (past clients re-calling for real estate needs to be satisfied).
7. Employment Contracts
- a. Once a broker and agent have agreed to sponsorship, a written employment contract will formalize the working relationships and determine the classification status for IRS purposes.
  - b. Employment contracts should contain:
    1. Compensation - how much and under what circumstances is it earned.
    2. Training - if required and when.
    3. Hours of work - include office duty times and open houses.
    4. Company identification - name tags, uniforms, business cards, etc., that may be required.
    5. Fees and dues required - Board and/or MLS.
    6. Other expenses - car, insurance, telephone, advertising.
    7. Fringe benefits - profit-sharing, group insurance, etc.
    8. Termination of employment - quitting and firing.
    9. Withholding - income taxes and social security.
  - c. Employee vs. independent contractor status.
    1. While the broker is an independent business person, the salesperson is not; the salesperson:
      - a. Works under supervision of the broker.
      - b. Receives compensation from the broker.
    2. The broker/salesperson relationship is allowed, for federal income tax purposes, to be classified as either an employee status or an independent contractor status.
    3. The major distinction between the two is whether or not the broker must withhold income taxes and social security from the associate's commission checks, as well as employer's share of social security taxes.
      - a. Employee status - broker must withhold income taxes, social security, and pay employer share to social security.
      - b. Independent contractor - the associate is responsible for his or her own income tax and social security payments.
    4. As a result of federal legislation effective in 1983, the IRS will recognize real estate sales associates as independent contractors if they meet all of these requirements:
      - a. Associate must be licensed.
      - b. Substantially all of the associate's agent earnings must be directly related to sales commissions generated and not based upon hours worked.
      - c. There must be a written agreement between the broker and associate stating specifically that the associate will be treated as an independent contractor for tax purposes.
8. Policy Manual Should Contain the Following:
- a. Name and brief biographical sketch of the founder of the company.
  - b. Date and location original office was opened.

- c. Number and names of original sales association.
  - d. Changes in office locations and dates of change.
  - e. Brief narration of the growth of the office.
  - f. Membership in trade organizations.
  - g. Company performance.
  - h. Non-discrimination policy.
  - i. Office hours.
  - j. Office security (keys, locking office, etc.).
  - k. Office cleanliness.
  - l. Eating at desk or work area.
  - m. Parking.
  - n. Office supplies (availability, copy machine, business cards, signs).
  - o. Educational material and its use.
  - p. Telephone use.
  - q. Secretarial help.
  - r. Drug and alcohol use.
  - s. Code of ethics and standards for office.
  - t. Maintaining contact with office during the day.
  - u. Changes of name, address, and telephone numbers.
  - v. Availability of broker and reporting problems to broker.
  - w. Arbitration of disputes.
  - x. Confidentiality - removing files, etc.
  - y. Compensation.
  - z. Appraisals.
  - aa. Opportunity time.
  - bb. Sales meeting.
  - cc. Tour of homes.
  - dd. Security of listed property.
  - ee. Handling of deposits (earnest money).
  - ff. Sales associates buying and selling property listed in the company.
9. Supplies, Equipment, Business Cards - some items to consider:
- a. Office supplies.
    - 1. Availability.
    - 2. Use.
  - b. Office equipment/business machines.
    - 1. Typewriter.
    - 2. Copy machine.
    - 3. Fax machine.
    - 4. Computer.
  - c. Business cards.
    - 1. Requirement for business cards.
    - 2. Who orders cards?
    - 3. Who pays for cards?
  - d. Signs.
    - 1. Where will they be stored?
    - 2. Who pays?

3. Sign rider - when to use?
  - a. Sales associate signs.
  - b. Directional.
  - c. "Under contract" and "sold."
10. Contracts
  - a. Required forms of contracts:
    1. Listing Agreements.
    2. Counter-Offer Forms.
    3. Purchase Agreements.
    4. Lease Agreements.
    5. Independent Contractor Agreements.
11. Broker vs. Member of Real Estate Trade Organization:
 

The Louisiana Real Estate Commission requires the person who is the managing broker to be a person who is duly licensed as a broker. A brokerage firm may join any trade organization. Some advantages and disadvantages exist for the person or firm when they join such organizations.

  - a. Broker - when deciding to join a real estate trade organization, the advantages and disadvantages are:
    1. Advantages of not joining:
      - a. Do not have to pay a fee to join or a monthly/annual fee.
      - b. Only have to comply with the rules and laws of the Louisiana Real Estate Commission.
    2. Disadvantages:
      - a. Do not have advantages of education programs.
      - b. In some areas, may not be able to join the MLS (Multiple Listing Service).
  - b. Realtor.
    1. Advantages:
      - a. More residential properties sold by realtors rather than non-realtors.
      - b. Education opportunities.
    2. Disadvantages.
      - a. The cost of membership.

## **B. Operating An Office.**

1. Recruiting and Training New Agents - because of natural attrition, a broker must always continue to recruit and train new agents in order to remain in business.
  - a. Sources of new agents.
    1. Hiring from other companies - some brokers consider this a good source of experienced agents. Other brokers feel agents who move from company to company simply take their problems from one company to another. There are strong negative feelings by many brokers on this subject.
    2. Recruiting by salespeople - friends, relatives, and neighbors of the salespeople are considered by some to be one of the best sources of new agents. This can sometimes be encouraged by bonuses or other incentives to salespeople to bring new agents to the company.
    3. Customers - many times a person who has just bought or sold a piece of property becomes interested in the work of the agent involved. This provides a golden opportunity for the salesperson or broker to get this client into real estate as an employee or independent contractor.

4. Newspaper ads - many brokers consider this the least desirable method of finding new agents. Chief complaint against this method is the low percent of agents obtained for the amount of time spent on number of calls and interviews.
- b. Training of new agents.
  1. If a company is to remain in business, it should maintain a continuing training program for all agents, both new and experienced.
  2. New agents have completed a school where they have learned real estate law, rules and regulations, real estate terms, as well as other information to help them meet minimum license requirements. The broker should teach, guide, help, and encourage them in things that will aid in the listing, showing, and selling of real estate.
  3. Whether the agent is new or experienced, the broker still has the responsibility of showing them office procedure in their job, as well as company policy.
  4. The broker is also responsible (whether in sales meetings or through a continuing education policy) to keep all agents aware of all changes in the real estate law or in any changes in rules and regulations.
2. Financial Records - All financial records must be kept in such detail that there can be no question as to where all funds go, and the purpose for which each transaction was made.
  - a. Sales Escrow Account - Of course the financial record that must always be as near perfect as humanly possible is the escrow account. Personal money is not to be commingled with the escrow. It is necessary to open an escrow account, and provide the Real Estate Commission with an escrow affidavit before opening an office. It is for the above reason plus paying for check books and any bank fees, that it is necessary for some of the broker's money to be in the escrow account. There is at all times a maximum amount allowed for this. The broker must at all times be aware of whatever that limit may be, not only what it is at the time he or she gets a license, but also any change that may occur after the broker is licensed and operating an office.
  - b. Rental Trust Account - This account also is an accounting for other people's money held in trust by the broker. This account is for brokers engaged in collecting of rental collections or deposits. This account, like the sales escrow account, must be kept up to date in clear, concise, and accurate manner.
  - c. Both sales escrow and rental trust accounts are to be kept in non-interest bearing checking accounts. No escrow account or rental trust account may be closed until all deposits have been properly disbursed according to the law. Every broker shall notify the Commission of intention to close an escrow account or rental trust account at least 10 days prior to the intended closing date.
3. Office Records - Every broker shall retain, for at least five years, readily available and properly indexed copies of all documents which in any way pertain to real estate transactions in which he or she has acted as a broker. Any transaction of real estate should leave a paper trail that can be easily followed.
  - a. There should be a file set up on any piece of property, either listed or sold through the office. A copy of each document that has been used or had any part in the transaction should remain in the file. For whatever reason that an investigation may be necessary, or even something such as a different agent having to complete a sale, it should be simple for a person to look at a file and determine what has transpired before. An office that keeps these kind of records will find it extremely beneficial when it becomes necessary for a sales manager or office manager to help in a transaction.

4. Advertising.
  - a. The broker should determine which type of advertising is most effective for his or her office. Newspapers, radio, television, signs, flyers, open houses, and mailouts, all have their place. Which of these is the most cost effective will vary from time to time.
  - b. The broker should keep a close check on the advertising and its results, so as to determine which is more cost effective for the office. One pitfall to watch out for is the advertising that seems best for an office, may not be the best under changed market conditions a few months later. The broker should always remain on top of this.
  - c. No matter which advertising is used predominantly (all will be used some), the broker must remain aware of the laws and rules governing advertising.
  - d. Whatever type of advertising is used, it should be clear, concise, and to the point. Under no circumstances should any advertising be misleading.
5. Compensation.
  - a. The real estate broker usually receives a commission from the seller of the property. However, the commission may be received from the purchaser. One of the causes for censure, suspension, or revocation of license is failure of a licensee to make clear for which party the broker is acting, and, if being compensated by more than one party, failure to divulge this fact to all parties.
  - b. The amount of commission is not determined by the law, but is an amount negotiable between broker and principal.
  - c. The compensation or commission paid to associate brokers or salespersons shall be paid by the sponsoring broker only.
  - d. Here again one of the causes for censure, suspension, or revocation of a license is for a licensee (associate broker or salesperson) to accept compensation from more than one party without the full knowledge of all parties to the transaction.
6. Other Departments.
  - a. Property management - In simple terms, a property manager is someone who preserves the value of an investment property while generating some income as an agent for the owners. A property manager is expected to merchandise the property and control operating expenses so as to maximize income. To maintain a property management department requires very accurate and precise record keeping.
    1. Records must be kept of each property.
    2. Rental trust account should be handled by one person, and extreme care must be taken as to accuracy.
    3. Maintenance records must be accurate and complete.
    4. Tax records of each property.
    5. Insurance, records of kind of insurance, amount, and premium.
    6. Rental payments.
    7. While maintenance records are mentioned above, if the company is not large enough to have a maintenance crew on full time to handle all kinds of repairs, then it should at all times have a list of repairmen who are available, for any repairs that may be necessary at a price that can make the department economically feasible.
  - b. Appraisals.
    1. If a company is to have an appraisal department, it should be a legitimate department used for the purpose of bringing additional profit to the company from a different source, not a gimmick for trying to get listings.

2. If a company is in the business of listing and selling real estate as well as appraising, then it should be extremely careful to avoid any action that might be construed as a conflict of interest of any kind.
- c. Commercial/Investment departments.
  1. Investment property agents.
    - a. Specialize in income producing properties. In this specialty, the salesperson is primarily selling monetary benefits. These benefits are the income, appreciation, mortgage reduction, and tax shelter that a property can reasonably be expected to produce.
    - b. To be successful in income property brokerage, the salespeople and brokers in the department must be very competent in mathematics, know how to finance transactions, and keep abreast of current tax laws. They must also have a sense for what makes a good investment saleable, and what the growth possibilities are in the neighborhood where the property is located.
  2. Commercial property agents.
    - a. Speculation in land.
    - b. Commercial leasing.
7. Agent Safety.
  - a. Need for agent safety.
    1. We work in an industry where we are exposed to the public more often than most people.
    2. We work in situations where we are alone with clients in vacant homes or properties.
    3. We work at odd hours, including after dark hours.
  - b. Ten commandments of agent safety - most crimes committed against real estate agents are crimes of opportunity. When the opportunity exists, the criminal acts.
    1. **DO NOT MEET A STRANGER AT ANY PROPERTY.** Ask to meet at your office (or public place after office hours) so others can see the prospect. Take a partner (another agent, or family member).
    2. **TAKE YOUR CAR.** Your environment is safer. Never ride in a stranger's car.
    3. **AVOID WORK AFTER DARK.** Close an open house well before dark. Show property only during daylight. If possible, write and counter offers during daylight. If not, use a partner.
    4. **DRESS FOR SAFETY.** Dress professionally, yet comfortably. Wear comfortable shoes. Avoid expensive jewelry. Do not carry large amounts of money.
    5. **SET A SHOWING ITINERARY.** Use a standard form. Leave a copy with the office or a family member. Let prospect know that a copy exists.
    6. **USE A PROSPECT ID FORM.** Before showing property, have a prospect disclose on a printed form such information as name, address, auto make and model, auto tag number, driver's license, local address, and two references. Verify the information before leaving.
    7. **USE AN AGENT ID FORM.** Make sure your office knows your auto make and model, license tag, and credit card numbers.
    8. **ESTABLISH A CODED DISTRESS SIGNAL.** When necessary, be able to call the office or home with a message that would appear harmless to a prospect, but would alert others.
    9. **STOP WORKING IMMEDIATELY.** At the first suspicious signal, inconsistent answers, or abnormal or strange behavior, cease working with the prospect. Trust

your feelings. An embarrassing moment or a lost sale is better than the alternative.

10. NOTIFY YOUR BROKER IMMEDIATELY. The broker should decide what action to take at that time.
8. Telephone - in any real estate office, there should be some rules as to the use of the telephones.
  - a. It should be impressed upon the agents speaking on the telephone that, even though the feeling of anonymity may exist when speaking on the telephone, the rules of misleading information still apply. Even when speaking over the telephone, the agent must never use misleading or inaccurate information, and must never misrepresent any property, terms, value, policies, or services.
  - b. There should be, included in the policy manual, a clear and simple explanation as to how telephone calls and prospects are to be handled.
    1. It should be clearly understood how it is to be determined which prospect belongs to which agent.
    2. For an office to operate successfully, dissension within the office must be avoided.
  - c. There should also be a clearly outlined policy for cooperating with other offices. Every agent answering the phones in an office should know what the company policy is for cooperating with other companies.
  - d. It should be impressed upon the agents that telephones are wonderful for getting information and making appointments. They can be used to pique a client's interest, but a client cannot sign an offer over the telephone. An agent should never try to make a sale over the telephone.
9. Marketing - a broker should learn to keep a close eye on his or her different marketing practices. The one that works best at one time or place, will not necessarily be the best a few months later, or if an office is opened in a different place. Each marketing technique has its own strength and weakness.
  - a. Newspaper ads probably reach the greatest number of people, in that, people will mark an ad and save it to call later. It is not unusual for an office to receive a call on a newspaper ad as much as two weeks after the ad was published. The disadvantage is that this method provides one of the lowest percentage of good prospects.
  - b. Radio and television:
    1. Reaches a large number of people.
    2. Its weakness is that this means of advertising must depend on the prospective client to either remember or write down the company's telephone number. It also has the disadvantage of the prospect not being able to save the ad to call in the future.
  - c. Mailouts.
    1. Have the advantage of being able to pinpoint a particular area or group of people. It has the advantage of being directed at people who might be interested in the property.
    2. This form of marketing has the advantage of being slow and time consuming. But perhaps its greatest disadvantage is getting lost or overlooked in the large volume of "junk mail" received by most people today.
  - d. Open house.
    1. The greatest advantage of this method is it allows the agent to have face to face contact with the prospect. This personal meeting with a client can be a great advantage for the agent. This method also conveys the owner of the property the idea that their property is being pushed by the company.

2. The disadvantage is the low number of prospects that may show up for an open house. This is particularly true if a property is not on a well traveled street, or is a little out of the way, or hard to get to.
- e. Signs.
1. Have the advantage that prospects who call will already have no objection to the neighborhood or outside appearance of the property. They already know the location of the property.
  2. The disadvantage of signs is that prospects who call on signs usually already know enough about the property that they usually only call to learn the price. This sometimes makes it difficult for the less experienced agent to keep them on the telephone long enough to get a prospect from the call.
10. Insurance.
- a. Home Owners Insurance - Should be sufficient to insure the home properly and also the unpaid balance of the mortgage. The lot cannot be reinsured, if client desires to only have owners insurance on total value (in case no mortgage is made on property) of the property. The lot could be deducted from value. It warrants the full value of property to be insured, since the difference in premiums does not warrant reduction of insured amount. Home owners policies have 5 codes: HO1, HO2, HO3, HO4, and HO5. The most used type is HO3.
  - b. Flood Insurance - The lender might require flood insurance (separate from home owners insurance). Most of the time this insurance can be obtained from the same source as home owners insurance. Flood insurance has a separate premium for the building and for the contents.
  - c. Mortgage Cancellation Insurance - This type of insurance, which is the life insurance, sometimes is required for approval of the loan by the lender. It is "term-insurance" and the insured amount will be reduced during the term of the loan in about the same amount as the principal of the mortgage is reduced. It is insurance to protect the lender (in case of death of the borrower) and of course, the heirs of the borrower. No cash value accrued on the insurance.
  - d. Accident and Health Insurance (A & H Insurance) - A premium is collected from the borrower so in case of accident or sickness of the borrower, the monthly payments or principal and interest on the loan would be made by the insurance company.
  - e. Errors and Omissions Insurance (E & O Insurance) - This type of insurance is used for "errors" made by salespersons and/or brokers due to accidental mistakes made in preparation of documentation (such as listings and purchase agreements). Any type of malfeasance would not be covered. Errors and Omissions insurance is mandatory for active licensees.
  - f. Liability Insurance - This would insure the broker for any possible legal action against the firm as considered to be liability.
  - g. Home Warranty Insurance.
    1. Buyer/Seller - Insurance to cover buyer and/or seller for any defective appliance, wiring, plumbing, etc., on home to be purchased/sold and can be obtained at premium for most homes (old or new).
    2. Contractor (HOW) - Insurance to cover the new construction obtained by contractor to insure construction of the home for a period of time (one year or more) with the buyer being the beneficiary (can be transferred to new owner).
11. Office Disputes.
- a. Types of disputes.
    1. Interoffice - Disputes between two different offices.

- 2. Intraoffice - Disputes within a single office.
  - b. Resolution of disputes.
    - 1. Interoffice.
      - a. Civil court suit.
      - b. Arbitration.
      - c. Mediation.
    - 2. Intraoffice.
      - a. Between broker and salesperson.
        - 1. Civil court suit.
        - 2. Arbitration.
        - 3. Sever relationship.
      - b. Between salespeople.
        - 1. Company policy prevails.
        - 2. Broker normally resolves dispute.
        - 3. Some companies have peer arbitration.
12. Security of Listed Properties.
- a. Occupied.
    - 1. Key control.
    - 2. Lock boxes.
    - 3. Instructions to owners.
      - a. Remove all valuables (jewelry, etc.) to safe deposit box or other safe place.
      - b. Keep other valuable items out of sight.
  - b. Vacant
    - 1. Key control.
    - 2. Lock boxes.
    - 3. Appointments.
    - 4. Services for owners.
      - a. Security patrol.
      - b. Ask for police checks.
      - c. Periodic inspection by listing agent.
      - d. Arrange for lawn maintenance and upkeep.
      - e. Arrange for utilities to be left on and lights and air conditioning or heat to be maintained.
      - f. Forward any mail received at residence.
13. Agency: The relationship created when one party authorizes another party to act on his/her behalf.
- a. Clients and customers.
    - 1. Clients are those parties to whom agents owe their loyalty and best efforts.
    - 2. Customers are potential principals in a transaction and can expect honesty and fairness from agents.
  - b. Whom does the agent represent?
    - 1. Generally, a principal - agent relationship is created when a party hires an agent to perform services and promises to pay for services rendered. In that case, the principal would be considered a client and the other potential parties to a transaction would be customers.
    - 2. Frequently, a customer implies by the behavior and representations made by the agent that he (the customer) is actually being legally represented in the transaction. That implication can lead to the inadvertent creation of a dual agency.

- c. Agency relationships.
    - 1. Sources of confusion.
      - a. Lack of disclosure.
      - b. Implied agency.
    - 2. Fiduciary responsibilities.
      - a. Acting with due care.
        - 1. Explaining basic terms of contract.
        - 2. Advising on price.
        - 3. Investigation of material facts related to property.
          - a. Question seller carefully regarding the property.
          - b. Investigate the property independently.
          - c. Investigate external influences that may affect the property's value.
      - b. Obedience to principal's request (as long as they are legal and ethical).
      - c. Accountability for funds.
        - 1. Commingling.
        - 2. Conversion.
      - d. Loyalty.
        - 1. Acceptance of compensation from someone other than the principal.
        - 2. Agent should make his best efforts to obtain the highest price for the principal.
        - 3. Undisclosed interest by agent.
        - 4. Confidentiality.
      - e. Notice: The principal must be made aware of any information related to the property or the transaction that may affect his decisions.
    - 3. Limits of authority.
      - a. In listing agreements, the authority granted to the real estate company is very limited. The authority revolves around doing only what is necessary to procure a buyer and usually can be classified as a Special Agency.
      - b. In management contracts, the authority is usually broader in scope because of the diversity of duties required to manage a property. This automatically would normally fall into General Agency category.
    - 4. Responsibilities to third parties.
      - a. Disclosure of defects.
      - b. Presentation of offers.
      - c. Honesty and fairness.
        - 1. Avoid exaggeration.
        - 2. Do not make statements regarding the property of which first hand information is not available.
      - d. Disclosure of agent-principal relationship.
      - e. Represent property accurately.
14. Creation of Agency Relationships.
- a. Compensation: Compensation technically has been earned by the agent when he produces a ready, willing, and able buyer. Actual payment of compensation and the time of that payment relies on several variables:

1. Written Listing Agreement.
  2. Provision for compensation as part of the purchase agreement.
  3. Compensation based on completed Act of Sale or on procurement of ready, willing, and able buyer.
  4. Responsibility for payment of commission in the event of default.
  5. Compensation based on negotiation.
- b. Agency options.
1. Sub-agency.
    - a. Salesperson to broker.
    - b. Selling broker to listing broker.
    - c. Responsibility of sub-agent to principal.
  2. Dual-agency.
    - a. Created through implication by third party.
    - b. Created contractually.
    - c. Requirement of disclosure of dual-agency.
    - d. Requirement of disclosure of dual compensation.
  3. Seller-agency.
    - a. Exclusive right to sell.
    - b. Exclusive agency.
    - c. Open listings.
  4. Buyer-agency.
    - a. Finder's agreement.
    - b. Compensation.
    - c. Disclosure of buyer agency to listing broker.

### **III. Closing Office.**

#### **A. Return of License.**

1. All real estate licenses of the broker, associate brokers and salespeople have to be returned to the Louisiana Real Estate Commission by either "hand carrying" the licenses or by certified mail.
2. The occupational licenses have to be returned by mail to city or parish.
3. Notify IRS of closure of office.
4. Notify Louisiana Department of Revenue.
5. Notify Department of Employment and Training.

**B. Sales Escrow Accounts** - After all deposits have been disbursed, a request to the Louisiana Real Estate Commission (in writing) has to be made to remove the balance of the amount the firm placed in the account. This cannot be done until 10 days after arrival of the request at the Louisiana Real Estate Commission. The same order has to be done with the Rental Trust Account.

**C. Listings in Effect** - All clients (sellers) have to be notified by mail of impending date of closure and suggestions should be made by the firm on transfer to another firm of the unsold properties. All salespeople involved should also contact the sellers in person or by telephone.

**D. Contract in Effect** - All contracts (purchase agreements) should be brought to their conclusion and it should be the duty of the broker to completely assist the salesperson on a speedy conclusion of the "pending" contracts.