



STATE OF ARIZONA

DEPARTMENT OF REAL ESTATE

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FREQUENTLY ASKED QUESTIONS – AUDITING

When applicable, the following information relates to all real estate brokers, cemetery brokers and membership camping brokers regardless of the broker's licensure as a designated broker or self-employed broker.

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BROKER AUDIT DECLARATION FORM:

What is the purpose of the Broker Audit Declaration?

The Broker Audit Declaration serves two functions.

- (1) To provide information to the Department's Auditing Staff about the broker's real estate practice since the last renewal period; and,
- (2) To provide the broker with an overview of the current Arizona Revised Statutes and Commissioner's Rules applicable to licensed brokers and confirm that the broker is complying with those statutes and rules.

Is the broker required to submit the Audit Declaration Form with the broker's license renewal or employing broker's (entity) license renewal?

A designated and/or self-employed broker is required to complete and submit a Broker Audit Declaration form prior to or with the broker's license renewal, pursuant to the Commissioner's Rule R4-28-303(A)(2)(f). A Broker Audit Declaration form is not required for the renewal of an entity license.

If a broker is semi-retired and doesn't use the real estate license often, does the broker have to complete and submit a Broker Audit Declaration form with the broker's license renewal?

Yes, any designated and/or self-employed broker with an active license must complete the Broker Audit Declaration as part of the broker's license renewal process regardless of whether or not real estate business has been conducted. If real estate business has not been conducted, most of the answers will be "N/A".

If the broker changes from a designated broker to an associate broker, is the broker still required to submit an Audit Declaration Form?

Yes, but only if the broker has not completed and submitted a Broker Audit Declaration Form within the last twelve (12) months.

How does a broker submit the Audit Declaration Form?

A designated or self-employed broker may complete and submit the Broker Audit Declaration through the Department's online renewal system no earlier than 90 days before the broker's license expiration date. The completed form may also be mailed or hand-delivered to the Department's Phoenix Office or may be scanned and attached to a message sent to the Auditing Division via the Department's Message Center.

BROKER SUPERVISION:

What level of supervision is a broker required to provide?

A designated broker is required to exercise reasonable supervision and control over the activities of brokers, salespersons and others in the employ of the broker and acting within the scope of their employment, as well as over the activities of the employing broker (entity) for which a license is required. (R4-28-1103.A, C and D)

What are the broker's supervision duties?

The broker's supervision duties include but are not limited to:

- (1) Review and manage real estate transactions performed by licensees;
- (2) Manage the use of unlicensed assistants by licensees;
- (3) Manage the handling of trust funds;
- (4) Manage the filing, storing and maintenance of transaction documents;
- (5) Oversee the delegation of others to act on behalf of the broker;
- (6) Familiarize salespersons and associate brokers with the requirements of federal, state and local laws relating to the practice of real estate; and,
- (7) Review all advertising by licensees and the entity to ensure compliance with the Commissioner's rules on advertising. (R4-28-1103.A and R4-28-502.G)

Is a Broker required to develop a written Broker Policy Manual?

Yes, unless the employing broker (entity) (1) maintains one office and employs a designated broker; (2) employs no more than one other licensed person; and, (3) employs no more than one unlicensed person. (R4-28-1103.G)

A model Broker's Policy and Procedure Manual, which was last updated in May 2011, is available through the Auditing Division's section of the Department's website at www.azre.gov. The designated broker may use the model Broker's Policy and Procedure Manual as a guide in developing the broker's own Policies and Procedures.

What is the required timeframe for broker review of transaction documents?

The designated broker is required to review each listing agreement, purchase or nonresidential lease agreement or similar instrument within ten (10) business days of the date of execution by placing the broker's initials and date of review on the same page as the signature of the parties. (A.R.S. § 32-2151.01.G)

Is there a statutory timeframe for a licensee to submit transaction records to a broker for review?

No, although the statutes require the broker to conduct broker review of transaction records within ten (10) business days, there is no statutory timeframe for a licensee to submit transaction records to the broker. The Broker's policies and procedures determine the timeframe for submittal of transaction records for review.

Who may be assigned broker supervision duties?

A broker may assign broker supervision duties to an associate broker employed in the designated broker's primary place of business or acting in the capacity as a branch office manager. The broker may not relinquish overall responsibility for supervision and control of the acts of an employing broker's employees. (R4-28-304.B and R4-28-1103.E)

What broker supervision duties may be assigned to an associate broker?

The designated broker may authorize an associate broker to (1) review and initial contracts; (2) supervise the activities of licensees; (3) hire or sever a licensee; (4) sign commission checks; (5) be a signer on the branch office trust account or property management trust account; (6) write checks from the broker's trust accounts; and, (7) be responsible for the handling of all trust account funds administered by the branch office. The designation must be made in writing and a copy retained in the broker's main office for a period of five (5) years. (R4-28-304.B)

What are the designated broker's options if the broker is temporarily unavailable due to illness or vacation?

If the designated broker is unable to act within 24 hours, the broker may designate a licensee in the broker's employ or another designated broker to act on the broker's behalf. The designation must be made in writing and may not exceed 30-days in duration. The designee may perform any and all duties the designated broker may lawfully perform, except that a salesperson may not be authorized to hire or sever licensees. A written authorization is required for each temporary absence by the broker. (A.R.S. § 32-2127.D)

What duties may a salesperson perform when acting as a branch manager?

A salesperson acting as a branch manager may (1) perform office management tasks that are not statutory duties of the broker; and, (2) be a signer on the broker's trust account and property management trust account. (R4-28-304.B.2)

A salesperson acting as a branch manager may NOT hire or severe licensees; perform broker review of transaction documents; issue commission instructions or sign commission checks.

What activities may an unlicensed assistant in the employ of the broker perform?

Per the Department's Substantive Policy Statement, SPS No. 2005.04, an unlicensed assistant may:

Perform telephone duties, including calls to:

- (a) Collect demographic information;
- (b) Solicit interest in engaging the services of a licensee or brokerage;
- (c) set or confirm appointments (with no other discussion) for:
 - A licensee to list or show property;
 - A buyer with a loan officer;
 - A property inspector to inspect a home;
 - A repair/maintenance person to perform repairs/maintenance; and/or
 - An appraiser to appraise property.
- (d) Mortgage and/or title companies to track the status of a file, check daily interest rates and points, whether buyer has been qualified, confirm closing appointment for licensee.

Assist a licensee at an open house.

Unlock a home for a licensee so that licensee can show a buyer the property or preview the property (no discussion about the property).

Deliver documents, as a mail or delivery service only.

What activities may an unlicensed assistant in the broker's employ NOT perform?

Hold / host an open house without an agent being present.

Perform a walk-through inspection.

Answer questions relating to a transaction document.

Give instructions to inspectors, appraisers or maintenance / repair people, which are part of a licensee's regular duties and have a direct relationship to the (potential) transaction.

What is a "broker in name only"?

A "broker in name only" is a designated broker who employs a salesperson or associate broker and allows the licensee to establish and carry on a brokerage business if the broker's only interest is the receipt of a fee for the use of the broker's license and the broker does not exercise supervision over the salesperson or associate broker.

PAYMENT OF COMPENSATION TO LICENSED AND UNLICENSED EMPLOYEES:

What is the definition of "Compensation"?

“Compensation” means any fee, commission, salary, money or other valuable consideration for services rendered or to be rendered as well as the promise of consideration whether contingent or not. (A.R.S. § 32-2101.16)

To whom may a broker pay compensation for the performance of real estate activities?

The broker may pay compensation for the performance of real estate activities only to actively licensed salespersons, associate brokers and brokerages. (A.R.S. § 32-2155.A and B)

May a broker pay compensation to a licensee’s corporation, LLC or general partnership?

No, corporations, limited liability companies and general partnerships are required to be licensed as real estate entities with a designated broker. (A.R.S. § 32-2125.A and A.R.S. § 32-2155.A)

A licensee may be paid in the name of the licensee **OR** through a professional corporation (PC) or professional limited liability corporation (PLC or PLLC), which has been registered by the licensee with the Department **AND** each member or manager holds an active real estate license in Arizona. (A.R.S. § 32-2125.B and A.R.S. § 32-2155.A)

May a broker pay compensation to a real estate team?

A broker may pay compensation only to active licensees for the performance of real estate activity. The broker may pay compensation to a licensee as a natural person or through a registered professional corporation (PC) or professional limited liability corporation (PLC or PLLC). (A.R.S. § 32-2155.A)

May a real estate broker pay a licensee compensation for negotiating a short sale?

No, negotiating a short sale for or in anticipation of receiving compensation for short sale negotiation activity requires a loan originator’s license issued by the Arizona Department of Financial Institutions (AZDFI) **AND** employment with a mortgage broker or mortgage banker. All compensation paid for short sale negotiations shall be paid by the mortgage broker or banker to whom the person negotiating short sales is licensed. (Effective July 2010)

Is the performance of broker price opinions activity for which compensation must be paid through the broker?

Yes, the performance of broker price opinions is considered licensed real estate activity that may be conducted only on behalf of the employing broker and for which compensation must be paid through the broker to whom the licensee is licensed.

May a broker pay compensation to an unlicensed assistant based on the sale or lease of a property?

No, unlicensed assistants and other unlicensed employees receive compensation based on their work, unrelated to the success of a transaction. (A.R.S. § 32-2155.B)

If an unlicensed assistant is paid on any basis that relies on the ultimate sale of a property, then the assistant must be licensed.

May an unlicensed assistant or other unlicensed employees be a member of a real estate team and be paid by the broker as a member of the team?

No, only active real estate licensees may be a member of a real estate team. A broker may pay compensation only to active licensees for the performance of real estate activity. The broker may pay compensation to a licensee as a natural person or through a registered professional corporation (PC) or professional limited liability corporation (PLC or PLLC). (A.R.S. § 32-2155.A)

Unlicensed assistants and other unlicensed employees receive compensation based on their work, unrelated to the success of a transaction. If an unlicensed assistant is paid on any basis that relies on the ultimate sale of a property, then the assistant must be licensed.

OUT-OF STATE BROKERS – COMPENSATION AND COOPERATION:

May a broker pay compensation or receive compensation from an out-of-state broker?

An Arizona licensed broker may pay compensation to and receive compensation from a broker lawfully operating in another state. (A.R.S. § 32-2163.A)

Under what circumstances may an Arizona broker cooperate with an out-of-state broker who would otherwise require licensure in Arizona?

An Arizona broker may enter into a written cooperation agreement with an out-of-state broker, as delineated in A.R.S. § 32-2163.C, E and F.

PLACE OF BUSINESS AND SIGNAGE:

Is a broker required to maintain a place of business?

Yes, a broker is required to establish and maintain a definite place of business. Any change to the broker's place of business must be reported to the Department within ten (10) days of any change. (A.R.S. § 32-2126.A)

May a broker conduct real estate activity from or establish a "Virtual Office"?

No, a "virtual office," with a mailbox in an executive suite or similar location in which the broker has no leased, dedicated office space does not qualify as a "definite place of business." (A.R.S. § 32-2126.A)

May a broker use a mailbox as an office address?

No, a mailbox in a U.S. Post Office, a UPS store or similar business does not qualify as a "definite place of business." A broker may use a mailbox only as a mailing address. (A.R.S. § 32-2126.A)

What is the result of a broker abandoning the broker's place of business?

Change or abandonment of a business location without notice shall automatically cancel the broker's license and shall sever the license of any salesperson or associate broker employed by the employing broker. (A.R.S. § 32-2126.A)

What are the signage requirements for a broker's place of business?

A sign must be affixed next to the entrance and clearly visible to all who enter. The sign shall include the name of the broker, the entity or doing business as (dba) name and designation of the broker as a real estate, cemetery or membership camping broker. (A.R.S. § 32-2126.B)

BROKER RECORDS:

What records is a broker required to maintain?

The broker is required to keep records of all transactions handled by or through the broker, including copies of sales contracts and addenda; earnest money receipts; closing or settlement statements showing all receipts, disbursements and adjustments; residential and/or nonresidential lease agreements; rental agreements; and, if applicable, a copy of the escrow instructions, listing agreement, employment agreements (property management, listing and buyer-broker agreements) and release of earnest monies.

The broker is also required to maintain employment records confirming the hiring, severing or license renewal of all current and former employees, including employment agreements. (A.R.S. § 32-2151.01.A and F)

How long is the broker required to maintain transaction and employment records?

The broker is required to keep the records of each transaction and employment records for a period of at least five (5) years from the date of the termination of the transaction or employment. (A.R.S. § 32-2151.01.A)

How long must the broker maintain copies of rejected offers?

The broker is required to keep an original or copy of any document evidencing a rejected offer to purchase real property for at least one year **OR** five (5) years if a binding contract ultimately results. (A.R.S. § 32-2151.01.H.1)

May a broker store records at an off-site storage location?

The broker records are to be maintained in the employing broker's principal office or licensed branch office in Arizona. A broker may store records at an off-site storage location in Arizona if the broker provides prior written notification of the street address of the off-site storage location to the department. (A.R.S. § 32-2151.01.A)

Is a broker required to notify the Department if electronically stored records are maintained at an off-site location?

Yes, the broker is required to provide written notification to the Department if the broker stores electronically maintained records at an off-site location.

What are the requirements for a broker electronically storing required records?

Per the Department’s Substantive Policy Statement, SPS No. 2005.06, the broker may store records electronically if the required transaction, employment and trust account records:

- (1) Are maintained in a manner allowing reconstruction in the event of destruction of electronic data;
- (2) The records can be produced, at the broker’s expense, in legible, written form (“hard copy”) upon the request of the Department for auditing inspection or investigation purposes;
- (3) The electronic records are exact duplicates of the original; and,
- (4) The stored records are legible. [A.R.S. §§ 32-2151(B)(2), 32-2151.01(A), 32-2151.01(H), 32-2175(A), 32-2175(B) and 32-2194.06(A) and (B)]

ESCROW ACCOUNTS AND BROKER TRUST ACCOUNTS:

What action is required when a licensee receives monies in connection with a real estate transaction?

Licensees in the employ of the broker shall promptly place all cash, checks, or other items received as payment in connection with a real estate transaction, in the care of the designated broker. (A.R.S. § 32-2151.01.D)

When and where should a broker deposit funds entrusted to the broker?

The broker should immediately upon receipt place all funds entrusted to the broker in the broker’s capacity as a real estate broker in a neutral escrow depository **OR** a trust account in a federally insured or guaranteed account located in Arizona **UNLESS** otherwise agreed to in writing by all parties to a transaction. (A.R.S. § 32-2151.A)

When is an agreement to place monies entrusted to the broker in a depository located outside of Arizona valid?

An agreement to place monies in a depository outside of Arizona is valid if all parties to the transaction agree in writing and either the monies are placed in a property management trust account that is federally insured or guaranteed and the property management agreement contains required disclosures **OR** if the monies are not deposited in a property management trust account, the broker discloses to the parties to the transaction that potential risks may accrue as the result of depositing the monies in a depository outside Arizona. (A.R.S. § 32-2151.C)

What are the minimum requirements applicable to each broker’s trust account?

In accordance with A.R.S. § 32-2151.B, the minimum requirements for a broker’s trust account include:

- (1) Monies shall be used only for the purpose for which the monies were deposited.
- (2) A complete record of all monies received in connection with a real estate transaction in the broker’s main or branch office located in Arizona or off-site storage location in Arizona.
- (3) The broker’s records shall be kept according to generally accepted accounting principles (GAAP) and shall include a properly descriptive receipts and disbursement journal and client ledger.

- (4) The broker shall maintain a trust account bank reconciliation and client ledger balance on a monthly basis and shall remove any interest earned on a trust account at least once every twelve (12) months.
- (5) A broker shall not permit advance payment of monies belonging to others to be deposited in the broker's personal account or to be commingled with the broker's personal monies.
- (6) When establishing a trust account, the broker may deposit no more than \$3,000 of the broker's monies to keep a trust account open or to avoid charges for an insufficient minimum balance.
- (7) Any computerized records shall be kept in a manner allowing reconstruction in the event of destruction of electronic data.

Who may act as a signer on the broker's trust account?

The broker shall grant authority to withdraw monies from the broker's trust account only to persons licensed under the broker's license (A.R.S. § 32-2151.01.B) or an unlicensed person in the direct employ of the broker (A.R.S. § 32-2174.C). Therefore, if a licensee has ownership of one brokerage with a trust account ("Brokerage A") but is licensed under another brokerage ("Brokerage B"), the licensee / owner **may not** be a signer on the broker's trust account for Brokerage A.

REAL ESTATE EMPLOYMENT AGREEMENTS:

Is a real estate employment agreement required?

No, a real estate employment agreement (i.e., a written agreement by which a real estate broker is entitled to compensation for services rendered) is not required for a licensee to represent a party in a transaction. (A.R.S. § 32-2151.02.D and E)

What are the requirements for a real estate employment agreement?

All real estate employment agreements shall:

- (1) Be written in clear and unambiguous language;
- (2) Fully set forth all material terms, including the terms of broker compensation;
- (3) Have a definite duration or expiration date, showing dates of inception and expiration; and,
- (4) Be signed by all parties to the agreement. (A.R.S. § 32-2151.02.A)

May a broker assign a real estate employment agreement to another broker?

A broker may assign a real estate employment agreement to another broker only with the express written consent of all parties to the agreement at the time of the assignment. (A.R.S. § 32-2151.02.B)

PROPERTY MANAGEMENT:

What is Property Management?

Property management is real estate activity involving the management by written agreement of an individual's rental properties for compensation. (A.R.S. § 32-2171)

Is a real estate license required to conduct property management services?

Yes, a real estate license is required to perform property management services. Property management services are provided to the employing broker's clients by persons licensed to the broker and with the knowledge and supervision of the designated or self-employed broker. (A.R.S. § 32-2101.48)

Under what name may a property manager perform property management services?

A property manager may conduct property management services only on behalf of the employing broker to whom the property manager is licensed. The department does not license an employing broker under more than one doing business as (dba) name and all property management services must be conducted or promoted using the name under which the employing broker is licensed. (R4-28-302.I)

What should be done to document a property management agreement?

The employing broker's involvement in the transaction is defined in the property management agreement, which must be clear and state all terms and conditions of the broker's services, be signed by the broker and not be assigned to another licensee without express written consent of the property owner. The specific requirements for a property management agreement are listed in A.R.S. § 32-2173.A.

If the property management agreement states the broker is holding the security deposit on behalf of the landlord, the tenant lease must state the same terms in order to provide full and accurate disclosure to the property owner and tenant.

May a broker advertise a property for lease without having a signed property management agreement?

Yes, if the owner authorizes the broker in writing to list or advertise the owner's property.

Is the designated broker required to review all rental agreements?

The Designated Broker is not required to review and initial fully executed residential lease agreements. The designated broker or designee must sign all residential rental agreements, and therefore need not initial a review of them. (ARS 32-2173.A) The broker is required to review and initial executed non-residential lease agreements.

Who is responsible for supervising property management employees?

An employing broker is responsible for all acts of associate brokers, salespersons and other employees of the brokerage. The designated broker must supervise the activities of the employing broker, associate brokers, salespersons and other employees of the employing broker. (R4-28-1103.A, C and D)

No salesperson or associate broker may conduct property management services if the broker does not authorize and supervise the activity. (R4-28-302.J)

What are the requirements for a property management trust account?

All property management accounts must be clearly designated as trust accounts and

include descriptive wording in the trust account title, such as "Trust Account", "Fiduciary Account", "In Trust for (individual or entity name)", "Trustee for (individual or entity name)" or "Fiduciary for (individual of entity name)". (A.R.S. § 32-2174.A)

The minimum requirements for a property management trust account are the same as for any broker trust account, as delineated in A.R.S. § 32-2151.B.

How should monies received from tenants or property owners be handled?

Within three (3) banking days after receipt, the employing broker must deposit the monies received in either the owner's direct account or the property management firm's trust account for the benefit of the owner. (A.R.S. § 32-2174.D)

May property management compensation be paid to licensees from a property management trust account?

No, a broker should pay compensation to licensees for property management services from the broker's business operating account, not the property management trust account.

Who may be a signer on a property management trust account?

The broker may authorize either a licensee or an unlicensed natural person in the direct employ of the broker to transfer monies or to be a signatory on the property management trust account. (A.R.S. § 32-2174.C) Therefore, if a licensee has ownership of one brokerage with a trust account ("Brokerage A") but is licensed under another brokerage ("Brokerage B"), the licensee / owner **may not** be a signer on the broker's trust account for Brokerage A.

What is a finder fee?

A "finder fee" means a fee paid to a tenant in an apartment complex managed by the property management firm for introducing or arranging an introduction between parties to a transaction involving rental of an apartment. (A.R.S. § 32-2176)

Who may be paid a finder fee?

Notwithstanding the requirements of A.R.S. §§ 32-2155, 32-2163 and 32-2165 or other provisions, a property management firm or a property owner:

1. May pay a finder fee five (5) times within a twelve (12) month period to a tenant in an apartment managed by the firm or owned by the owner;
2. May not be paid to a residential leasing agent or manager; however, the residential leasing agent or manager may receive a bonus pursuant to A.R.S. § 32-2121.A.6;
3. May not pay a finder fee exceeding a two hundred dollar credit toward or reduction in the tenant's monthly rent.

Is a property owner required to hold a real estate license to manage the owner's property?

A property owner may be exempt from the licensing requirements of this chapter

pursuant to A.R.S. § 32-2121.A.1, if the owner receives no special compensation, such as commissions or management fees for the management of the property.

Is the "residential leasing agent or manager" of the owner's property required to hold a real estate license?

The "residential leasing agent or manager" must have a license if they perform property management activities at more than one location during a workday or if they receive special compensation, i.e., commissions or property management fees, for their services. (A.R.S. § 32-2121.A.6)

What jurisdiction does the Department exercise over landlord /tenant disputes?

The department has no jurisdiction over landlord / tenant disputes. (A.R.S § 32-2160)

During the term of the lease, does the security deposit belong to the landlord or the tenant?

The security deposit belongs to the tenant. The landlord or the landlord's agent, the real estate broker, holds the security deposit for the tenant pending full performance of the tenant's obligation under the lease.