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PRINCIPAL AND EXECUTIVE BROKERS' SELF-EVALUATION GUIDE

DECEMBER 2014

Preface

Through years of experience, AREC Investigators have made observations, received numerous questions, and been in several discussions about issues of interest to Principal and Executive Brokers of real estate firms in Arkansas. The information presented in this Self-Evaluation Guide is a reflection of those experiences. The Investigators are pleased to assemble this information in the hope that these Brokers will find it helpful in reviewing their own operations.

Knowing that there are several facets to operating a successful real estate firm, this guide will provide a checklist for Principal and Executive Brokers to ensure their business is operating in compliance with the Arkansas Real Estate License Law and Commission Regulations.

Please feel free to call one of the Investigators if you would like to share your ideas and responses to the questions in this evaluation, or if you have suggestions of other items you think should be included.

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Principal and Executive Brokers' Self-Evaluation Guide

This Self-Evaluation Guide consists of questions you might find useful to ask yourself about your practices, policies and procedures. Review and analyze your own performance as a Principal or Executive Broker in accordance with the Arkansas Real Estate Commission's Real Estate License Law and Regulations, as well as basic real estate practice.

Office Location

- Are all your licenses displayed and visible to the public?

COMMENT: Commission Regulation 7.3 states the requirements for the brokerage place of business and signage.

- Is your office signage still the same as furnished to AREC?

COMMENT: Commission Regulation 7.3(d) requires the broker to notify the Commission in the event of any signage modification.

- Have your branch office locations been approved by AREC?

COMMENT: Arkansas Code Annotated §17-42-309(b) and Commission Regulation 7.4 set out the requirements for branch offices.

- Are your records and transaction files maintained at your office?

COMMENT: Commission Regulation 10.7(b) sets out the requirements for maintenance of records.

Trust Accounts

- Have you provided all your current trust account information to AREC?

COMMENTS: Commission Regulation 10.8(e) requires each Principal Broker to keep the Commission informed at all times regarding the name and number of their trust account, the name and address of the bank in which the trust account is held, and the date the account was opened.

- Trust Account Reconciliation:
 - Is your trust account bank statement reconciled monthly?
 - Does the reconciliation show that the adjusted balance on your bank statement equals the checkbook balance?
 - Do your trust account records show the amount of funds held for each owner of the funds?
 - Can you provide a list of funds in the account, which have not been disbursed, that balances with the adjusted bank balance?

Note: If you have your trust account on computer and use a software package that you would recommend to others, please share that information with AREC Investigators.

- According to your transaction files, what is the total amount of earnest money and security deposits you are currently holding?
- Can you account for that money and show that it is being held in your trust account?
- Do you have paperwork that accounts for all funds you are holding in your trust account?

COMMENT: Commission Regulations 10.7, 10.8 and 10.9 all set out requirements for the handling of trust funds and trust accounts.

Transaction Files

- Do you review all listings taken by agents licensed with your firm?

COMMENT: Commission Regulation 10.4(a)(1) holds a principal broker generally responsible for all business conducted by the broker's firm and for all of the real estate activities of all of those licensed under or associated with the principal broker, unless the licensee conducted real estate business independently and without permission or authority from the principal broker. If the principal broker learns that a licensee is conducting business independently, that principal broker must comply with Commission Regulation 10.1(a).

- **Prior to closing**, do you review and sign off on all real estate contracts?

COMMENT: Commission Regulation 10.12(b) sets out the requirements for review of real estate contracts.

- Do your closed transaction files contain the following?
 - Listing contracts for properties your firm listed;
 - Agency Representation agreements for buyers your firm represented;
 - Rejected offers;
 - Accepted offers;
 - Real Estate Contract addenda;
 - Agency Disclosure Forms;
 - Closing Statements signed by buyer(s) and seller(s);
 - Any other agreements pertinent to the transaction that make the file complete;
 - Copies of earnest money deposit slips or receipts if deposited with an escrow agent;
 - Copies of earnest money disbursement checks if applicable.
- Do your trust account deposits and checks identify the real estate transaction to which the funds apply?
- Do you retain trust account records and transaction files for 3 years or more?

COMMENT: Commission Regulation 10.7(b) addresses the Principal Broker's responsibility for maintenance of records.

Property Management

- Do you have current written property management agreements with owners of all property your firm manages?

COMMENT: Commission Regulation 10.10 addresses the broker's responsibility to see that the exact agreement of all parties regarding real estate is in writing.

- Do you have current written lease agreements with tenants of properties your firm manages?

COMMENT: SEE COMMENT for above.

- Has the property management agreement form and the lease/rental agreement form used by your firm been approved by an Arkansas attorney?

COMMENT: Commission Regulation 10.10(c) requires that all real estate forms used by licensees in the regular course of business be approved by a licensed Arkansas attorney prior to use.

- Have you collected all security deposits shown in your tenants' lease agreements?

COMMENT: Commission Regulation 10.7(a)(1) requires a licensee to immediately deliver to the Principal Broker any money or other consideration received in connection with a real estate transaction.

- Do you have deposit slips for all security deposits held in your trust accounts?

COMMENT: Commission Regulation 10.7(b)(2) requires each Principal Broker to maintain complete records pertaining to property managed for others.

Property Management (continued)

- If a licensee with your firm owns rental property do you have one of the following?
 - ➡ Copy of the lease agreement and deposit slip showing the tenant's security deposit is in your trust account, or
 - ➡ Copy of a written agreement whereby the tenant agreed that his/her security deposit would be held somewhere other than your trust account?

COMMENT: Commission Regulation 10.8(h)(1) requires the Principal Broker to either maintain such funds in the firm's trust account or to maintain a copy of an agreement signed by the licensee's tenant stating otherwise.

Supervision

- What do you estimate as the number of hours per week you spend supervising your agents?
- Do you have any part-time agents? If yes, how do you supervise them?
- To whom do agents licensed with your firm go for advice and guidance when confronted by difficult situations?

COMMENT: Commission Regulation 10.4(b)(c) sets out the Principal and Executive Broker's requirements for properly supervising salespersons licensed under him/her.

- Do any of your agents have assistants? Licensed or unlicensed? If unlicensed, what do they do? How are assistants paid, and by whom?

COMMENTS: Arkansas Code Annotated §17-42-103(12) lists the activities which, when performed for another for expectation of compensation, require an Arkansas real estate license. While unlicensed assistants may make appointments for agents, type correspondence and perform other duties normally assigned to a

secretary or administrative assistant, brokers must make sure unlicensed personnel do not perform activities that require a license. Arkansas Code Annotated §17-42-311(a)(12) lists as a prohibited act paying a commission to any person for acts or services performed in violation of the Arkansas Real Estate License Law. Arkansas Code Annotated §17-42-311(a)(8) lists as a prohibited act accepting compensation from any person except the licensed Principal Broker under whom a licensee is licensed.

- For Executive Brokers in your firm, if your name is on the Real Estate Contract as Supervising Broker, you are responsible for supervising that licensee during the transaction.

COMMENT: Arkansas Code Annotated §17-42-103(9) defines Executive Broker, and Commission Regulation 10.4(2) describes procedures to designate Executive Brokers.

- Sales Meetings
 - ➡ Do you have regular sales meetings?
 - ➡ Do you monitor participation to know that agents are receiving the training they need?
 - ➡ Do you review sections of the Real Estate License Law and AREC Regulations? If so, do you have agents sign that you did, and that they understood what you presented?
 - ➡ How do you instruct your salespersons with regard to the fundamentals of real estate practices and the ethics of the profession?
 - ➡ How do you keep your salespersons informed and abreast of all changes and developments pertaining to the Real Estate License Law and Regulations?

COMMENT: Commission Regulation 10.4 sets out the responsibilities of a Principal Broker for instructing those brokers and salespersons licensed under them, and for general operation of the business.

Education

- Are you selective when choosing educational offerings?
- Do you advise your licensees to be selective when choosing educational offerings?
- What do you try to accomplish through continuing education?

COMMENTS: The Arkansas Real Estate Commission has developed a structure for continuing education courses that allows a wide variety of topics available for licensees to meet the annual six-hour continuing education requirement. Subjects that are applicable to the licensees' area of practice are more beneficial for the licensees and for the Principal and Executive Brokers under whom they are licensed.

- Do you observe the credentials of your continuing education instructor and encourage your licensees to do the same?
- Do you or your salespersons repeat the same continuing education course each year?

COMMENTS: The educational histories of licensees that have appeared before the Arkansas Real Estate Commission for a disciplinary hearing in recent years have shown that the agents sometimes repeated the same courses year after year.

- Do you select continuing education instructors who make an effort to stay abreast of changes to laws and regulations that affect your business?

COMMENTS: The Arkansas Real Estate Commission offers several workshops, seminars, meetings, etc. in which real estate instructors can sharpen their skills and stay abreast of issues relating to real estate. Some of the workshops are mandatory.

Business Operations

- When advertising property for sale or lease, including their own property, do agents licensed with you include in the advertisement or sign the name of your firm?
- Do agents licensed with your firm advertise or conduct real estate brokerage business under any name other than the name of your business?
- When advertising their individual names and telephone numbers, do agents licensed with your firm include your company's name in the advertisement?

COMMENT: Commission Regulation 10.5 sets out the requirements for agent's advertising.

- When buying or selling property in which they have an interest, do all agents licensed with you disclose to the parties the fact that they are seeking to acquire or have an ownership interest in the property and are licensed with your firm?

COMMENT: Regulation 10.11 addresses self-dealing.

LICENSING REQUIREMENTS FOR BROKERS AND SALESPERSONS

	<u>Salesperson</u>	<u>Broker</u>
Pre-License Hours	60*	60
Post-License Hours	18	30
Continuing Education	6 hrs.	6 hrs.
Application Fee	\$50	\$50
State Background Check Fee	\$22	\$22
Federal Background Check Fee	\$16.50	\$16.50
Examination Fee	\$75	\$75
Renewal Fee	\$60	\$80
Late Renewal Fee (After Oct. 1st)	\$80	\$110

*30 Hours in Basic Principles

RESULTS:

- So how does your office shape up?
- Are you in compliance with the subject matter covered in this booklet?
- Do you need a little help?
- Do you need to brush up in some areas?

***The AREC Investigations Department is here
to help you **BEFORE** a problem occurs.***

***They will be glad to answer
any questions you may have.***

***You can contact an AREC investigator
at 501-683-8010, or through the website
at www.arec.arkansas.gov.***



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