

Brokerage Management Ideas

Note: This module is intended to provide a summary of those issues that a Broker is responsible for reviewing and managing in a brokerage firm. The outlines and checklists in this module are intended to provide the Broker with a foundation to establish best practices for the firm. They are not an absolute guarantee that if followed, the firm or licensee will not commit a violation of the License Laws, Rules and Regulations.

Common Areas Requiring Management and Review:

1. Routine Office Examination Checklist
2. Contract Review
3. Advertising Review
4. Brokerage Relationships
5. Basic Trust Account Management
6. Independent Contractor Agreement
7. Licensees and Personal Real Estate Transactions
8. Notification and Records Maintenance
9. Ideas for Office Policies and Procedures

These lists are not intended to give legal advice or counsel regarding license law matters. These checklists should be adjusted according to the practice of each individual Broker and brokerage firm and sometimes the transaction itself.

1. Routine Office Examination Checklist

If the Commission were to initiate a routine office examination and or review of your firm's trust account, the following information must be readily available for review:

1. Trust account bank statements
2. Reconciliation statements
3. Trust accounting records
4. Bank deposit slips
5. Pending and past Purchase and Sale Agreements
6. Unconsummated offers on which you took deposits or earnest money
7. Listing contracts
8. Management agreements
9. Lease agreements
10. Settlement statements
11. Licensee's contractual agreements: Independent Contractor, Affiliation Agreements
12. Each license received a copy of the firm's written policies and procedures
13. Copies of documents must be maintained for 3 years.

2. Contract Review Checklist 43-40-18(c)

Failure by the Broker to review offers and contracts within 30 days of the date of the offer or contract is a violation of the license law.

In completing a lease or a written offer to buy, sell, lease, rent, or exchange real property, the Broker must ensure the following is included:

- a description of the property involved
- price and a method of payment
- dates necessary to determine whether the parties have acted timely in meeting their responsibilities under the lease, offer, or contract
- any special stipulations or addenda the offer requires
- License number of the brokerage firm(s) stated in the contract or offer
- License numbers of all licensees involved in the contract or offer
- Disclosure of agency relationships
- Copies to all parties signing

The Broker should ensure that the basic elements of a contract are complete and clear. Such basic elements could include:

- Legal Description
- Price
- Method of Payment
- Consideration
- Legal Purpose
- Mutual Assent
- Genuine Assent
- Signatures
- Offer and Acceptance

3. Advertising Review

- The Broker must approve all advertising in writing.
- Remember that advertising includes any media.
The term “media” includes, but is not limited to, print, photographic, broadcast, and computer media including, but not limited to, such examples as newspapers, magazines, flyers, posters, business cards, billboards, radio, television, signs (including, but not limited to, office, directional, for sale, for lease, sold, or vehicle signs), newsletters, and the Internet.
 - The Broker must approve all advertising in writing.
 - Advertisements must state the name of the brokerage company as it is licensed with the Commission
 - If advertising any property, the ad must state the company name and its main phone number
 - The brokerage company name must be of equal or larger size print than the name of any licensee
 - No licensee name can be stated more frequently or more prominently than the brokerage company name
 - The brokerage company phone number must be of equal or larger size print than the phone number of any licensee

The Broker must have established procedures for management level review of all advertising and specifically for advertising by agents that own property:

- An agent acting as principal must notify the Broker in writing of specific property being advertised and get the Broker’s written permission for the advertising.
- Any advertisement by an agent/principal must state the agent holds a real estate license or a legend stating the agent’s license number (i.e. Georgia Real Estate License ##### or GA R.E. Lic.: #####).

In addition to requiring compliance with the License Laws, Rules and Regulations, the firm should have clear and specific procedures for the review of all advertising such as:

- Individual licensee web sites
- Social media marketing
- Internet and email policies
- Company branding and promotion, use of trade names, logos, etc.

Advertising Rules for Real Estate

To identify requirements, begin with rules for "All Advertising" and build, by adding "Advertising a Specific Property" and "Advertising Licensee Owned Property", if applicable.

All Advertising:

520-1-.09

1. Is not misleading
2. Does not discriminate
3. Is in the name of the broker
4. Is reviewed and approved by the broker

Advertising a Specific Property

5. Must have owner's permission
6. Broker's name equal or greater size, frequency or prominence than agent(s)
7. Broker's telephone number equal or greater size, frequency or prominence than agent(s)

Advertising Licensee Owned Property

8. Written notification to Broker
9. Broker's written consent and approval
10. Includes appropriate licensee disclosure

Complete rules on advertising can be found in Chapter **520-1-.09**

9/12/08

4. Brokerage Relationships

The firm Policy and Procedures document should describe the firm's policies on agency relationships, according to [Brokerage Relationships in Real Estate Transactions Act \(BRRETA\)](#):

- What types of agency the company practices
- What types of agency the company does not practice
- Policies and procedures to ensure that all agency disclosures are made

Brokerage Engagements include all of the following: Reference [520-1-.06 Brokerage Relationships](#)

1. Listings
2. Buyer Agency Agreements
3. Tenant Representation Agreements
4. Landlord Representation Agreements
5. Community Association Manager Agreements
6. Property Management Agreements
7. Any agency relationship between the brokerage firm and a client.
8. Definite expiration date
9. Copies to all individuals signing
10. Clear method to determine the Broker's fee

Property Management Agreements must include: Reference Rule [520-1-.06\(2\)](#).

(2) Management Agreements.

(a) Every written property management agreement or other written authorization to manage real property between a broker and the owners of the real property shall:

1. Identify the property to be managed;
2. Contain all the terms and conditions under which the property is to be managed;
3. Specify the terms and conditions on which the broker will remit property income to the owner and on which the broker will provide periodic written statements of property income and expenses to the owner, provided that the periodic written statements shall be submitted to the owner on at least an annual basis;
4. Specify which payments of property related expenses are to be made by the broker to third parties and how such payments are to be funded;
5. State the amount of fee or commission to be paid and when the fee or commission will be paid;
6. Specify whether security deposits and prepaid rents will be held by the broker or the owner;
7. Contain the effective date of the agreement and its termination date;
8. Provide the terms and conditions for termination of the property management agreement by the broker or the owner of the property; and
9. Contain signatures of broker and owner or their authorized agent.

(b) The licensee shall give to the owner or the owner's authorized agent a legible copy of every written property management agreement or other written authorization to manage real property at the time the signature of the owner is obtained; and the licensee's broker shall retain a copy.

CAM: The License Laws, Rules and Regulations require Community Association Managers to have a Fidelity bond or fidelity insurance policy, unless the Broker never collects, disburses, controls, or has access to more than \$60,000. The Community Association Management Agreement must address this issue.

5. Basic Trust Account Checklist: (Reference [43-40-20](#) and [520-1-.08](#))

- If the Broker accepts any monies of others such as earnest money or security deposits, etc., the Broker must maintain a separate, federally insured bank check account, designated as a trust account, and registered with the Commission.
- The Broker must complete, at least monthly, a written reconciliation statement comparing the Broker's trust account liability with the reconciled bank balance(s) of the Broker's trust account(s).
- Every Broker with a trust account must maintain an accounting system detailing:
 - Names of each depositor
 - Amount and date of deposit
 - Identification of the property involved
 - The amount, payee and date of each check drawn on the trust account.
- The accounting system for the trust account (s) can be manual or electronic but it must be readily accessible upon request of the Commission.
- Any monies of others that come into a licensee's possession must be given to the Broker as soon as practicably possible.
 - There must be written policies with instructions for turning in trust funds to the designated person for safekeeping until deposit.

- There must be a receipt for any trust fund deposit.
- The Broker's review of a contract must verify the trust funds were received and deposited as indicated in the contract, lease, etc.
 - The deposit slip in the file should match the time frame stated in the contract.
 - Trust funds should be easily tracked from receipt to closing or disposition.
- Only the Broker can return trust funds to the issuer.
- No licensee other than the Broker can disburse any trust funds.
- Even if an offer is not accepted, the Broker must keep the documents and record of trust money transmittals in his/her files for 3 years.

6. Independent Contractor Checklist

- Each licensee must have a written agreement with the Broker.
- The agreement must state how the agent is paid when he/she works at the firm
- The agreement must state how the agent is paid when he/she leaves the firm
- The agreement should clearly state procedures to be followed when licensees leave the firm such as:
 - Returning property and files of the firm
 - Returning property keys for listings of the firm
 - Returning company signs and other company property

Although these are not requirements of the License Laws, Rules and Regulations, the following is a list of more practical issues that should also be addressed in the Independent Contractor agreement:

- Compensation program detail such as expenses for which the licensee is responsible
 - State whether or not the licensee is given permission to sign listings, contracts, etc. on behalf of broker
 - Confidentiality policy regarding company or client information while affiliated or not affiliated with the firm
 - List of real estate the licensee currently owns
 - List of responsibilities of the Licensee
 - Provided that the licensee is an independent contractor, and state there is no employment contract and:
 - Licensee is responsible for all federal, state income taxes
 - Licensee is not under the direct supervision or control of the broker
 - Issues when a licensee leaves the firm:
 - Disposition of listings
 - Issues and status regarding pending transactions, such as lists of prospects on existing listings
- It can be helpful to include the statement and signature of the licensee that he/she has received, read, understands, and agrees to comply with the following:

- All license laws, rules and regulations of the Georgia Real Estate Commission
- Firm Office Policy and Procedures Manual
- BRRETA Written Office Policy

7. Licensees and Personal Real Estate Transactions Reference [Rule 520-1-.11 and 520-1-.09.](#)

- The Broker must be notified in writing of any personal real estate transactions, advertising, or real estate dealings by licensees before they occur.
- The licensee must give the Broker a copy of all offers, contracts or other documentation involving personal real estate transactions by licensees.
- The licensees must deposit all earnest money or other trust funds in the company trust account or get the broker's written approval to maintain a personal trust account.
- Licensees advertising as principals must comply with all the advertising requirements of the License Laws, Rules and Regulations

8. Notification and Records Maintenance

Within 30 days the Georgia Real Estate Commission must be notified in writing of:

- Change of firm place of business
- Change of any licensee's mailing address or home address
- Change in the bank where the Trust Account(s) is located

Within 10 days the Georgia Real Estate Commission must be notified in writing of:

- Notice of the final disposition of a court action involving an unfair trade practice listed in License Law 43-40-25
- Notice of criminal conviction
- Notice of sanction by any real estate regulatory body or any state or federal licensing agency

Records Maintenance

The Broker is required to maintain records for 3 (three) years. Those documents that must be maintained by the Broker include the following:

- Closed sales transactions, settlement statements
- Offers, Contracts
- Trust Account records to include all documentation regarding trust funds, such as all deposit slips, reconciliation statements and disbursements for any trust funds (whether the transaction closed or not)
- Leases, Rental Agreements
- Listing Agreements, Management Agreements
- Buyer Agency Agreements
- Dual Agency consents
- Bank records, accounting records
- Advertising
- Independent Contractor Agreements
- Office Policies and Procedures
- Documentation for transactions pending beyond 3 years
- Communications between the Broker and the licensees
- Records of training provided by the Broker

9. Ideas for the Office Policies and Procedures Manual

Licensee should sign acknowledging receipt of the written Policies and Procedures of the firm and that he/she has read it and agrees to follow those terms. Other issues that should be addressed include:

- Firm Compensation structure
- Business procedures such as entering listings in a multiple listing database
- Policy regarding licensees forming teams
- Policy regarding unlicensed and licensed assistants
- Policy regarding personal real estate transactions and rental property
- Education policy such as a required orientation or ethics training
- Standards regarding production, technology requirements and other issues

A more detailed outline of suggested ideas to be included in the firm Policies and Procedures Manual is attached to the end of this document.

Methods to reduce the Broker's risk in any business model:

1. Recruit or hire professional, ethical and business-minded associates
2. Establish and implement good firm policies, procedures and communication systems with all agents
3. Seek the services and advice of professionals in tax, legal and accounting matters and maintain good accounting practices
4. Document meetings with licensees, and specific discussions regarding license laws and other training provided to licensees.
5. Refer those transactions where the firm has little or no experience or expertise to other firms.

Risk management involves hands-on management and awareness of the daily operations of the firm. Developing good policies and procedures and checklists for following up on those policies and procedures can be invaluable when managing licensees and striving for compliance with the license laws, rules and regulations.

Additional Ideas for Policies and Procedures

Disclaimer: In an effort to aid the licensee in complying with the license law and minimizing the risks of violations, these lists are provided as a reference tool, but are not intended to cover or include every item or issue that needs to be addressed in a Policies and Procedures Manual or in managing and operating a real estate brokerage firm. In addition to all those issues required by the License Laws, Rules and regulations to be addressed in the Policies and Procedures of a real estate brokerage firm, the following may be helpful to the Broker in managing licensees.

- Licensee should sign acknowledging receipt of the Policy and Procedures Manual and that he/she has read it and agrees to follow its terms.
- The firm policies could be used to establish standards such as:
 - Minimum attendance at broker meetings or training sessions
 - Minimum production standards
 - Minimum office duty time
 - Maximum deadlines for turning in offers, contracts, funds
 - Minimum technology requirement by the licensee
 - Specific procedures for receipts for trust funds, contract review requests, etc.
 - Certain membership requirements
 - Resources available to the licensee
 - Standards regarding referrals
- Compensation structure
 - Office Fees and use of office
 - Commission disputes among licensees
 - Licensee's Responsibility for certain expenses & Expense reimbursement policy
 - Use of office equipment, supplies, etc.
 - Services provided by the broker for a fee and without a fee
 - Insurance requirements for automobile, health, comprehensive, errors and omissions, etc.
- Policy regarding licensees forming teams
- Licensees and Brand promotion
- Policy regarding unlicensed and licensed assistants
 - Broker's written approval procedures
 - Contract terms between licensee and unlicensed assistant
 - Contract terms between broker and the licensee's unlicensed assistant, or licensed assistant
- Firm policy regarding rental properties or personal real estate transactions by licensees
- Expectations for communication with the broker such as Frequency and Methods of communication
- The Broker might require that each licensee sign up for and regularly read the Commission newsletters and publications, electronic or printed newsletters
- The Broker could identify specific education the broker requires licensees to complete
 - In-house training courses such as orientation or ethics
 - Specialty area training, such as a Post-license course in their area of expertise
 - Annual requirement for each licensee to attend a course in a specific subject area, such as trust accounts, updates on License Laws, Rules and Regulations, or technology training
- Business procedures:
 - Entering listings in a multiple listing database, responsibilities, management
 - Responsibility for removal of listings, signs, etc.
 - Presenting offers
 - Delivering paperwork
 - Disclosure statements
 - Forms used or required
 - Keys, location and management
- Open house policies and standards
- State office policies regarding the following:
 - Smoking Policy, Dress codes
 - Personal Safety
 - Drugs, Alcohol and Sexual harassment in the office
 - Equal Opportunity and Fair Housing Policy
 - Anti-trust policies