



AREC

*ARKANSAS
REAL ESTATE
COMMISSION*

PROPERTY MANAGEMENT SELF-EVALUATION GUIDE

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PROPERTY MANAGEMENT SELF-EVALUATION GUIDE

Property Management activities include the leasing, managing, marketing and overall maintenance of the property of others. Property Management involves more bookkeeping and paperwork than most other areas of real estate practice.

AREC Investigators continue to see deficiencies during office examinations of Property Management transactions. That is why this guide



was developed, with input from the AREC Investigators, to assist you in complying with the Real Estate License Law and Commission Regulations.

This should be used as a guide for Property Management practice in Arkansas. This material applies whether you are managing one or one hundred properties. Review your operating procedures with this *Self-Evaluation Guide*. If you have any questions, please contact an AREC Investigator. (See *Page 14* for contact information.)

This *Self-Evaluation Guide* consists of questions you might find useful to ask yourself about your practices, policies and procedures regarding Property Management. Review and analyze your own priorities in accordance with the Arkansas Real Estate License Law and Regulations.

Take a few minutes to answer the questions in the following categories to see how your Property Management policies and procedures reflect Arkansas Real Estate Law and Regulations.

PROPERTY MANAGEMENT FORMS

Property Management Agreement:

A contract between the Property Manager (Principal Broker) and owner of the property which outlines the responsibilities and authority of the Principal Broker.

- *Do you have signed current Management Agreements with owners of each and every property that you manage?*

Lease Agreement:

A contract between the landlord and tenant establishing the tenant's right to use and possess the property according to agreed upon terms and conditions.

- *Do you have current Lease Agreements with each and every tenant of property you manage?*

Commission Regulation 10.10(a) states:

"Except as provided in Regulation 10.10(b), a licensee, for the protection of the public and of all parties with whom the licensee deals, shall see that the exact agreement of the parties regarding real estate is in writing. A licensee shall also see that clients and other parties to the transaction with whom the licensee deals receive copies of such agreements signed by all parties.

(Examples: Exclusive agency agreements or contracts, real estate contracts, closing statements, lease agreements, management agreements, financial obligations and commitments, etc.) It is strongly recommended that a licensee obtain written acknowledgement from the buyer and/or seller that the buyer and/or seller have received said signed copies."



TRUST ACCOUNT, TRUST FUNDS AND ACCOUNTING

Trust Account:

Bank accounts into which trust funds (and only trust funds) are deposited.

- *Is your trust account identified as a “trust or escrow” account?*
- *Is your trust account non-interest bearing?*

Commission Regulation 10.8(c) states:

“A principal broker who receives trust funds shall either maintain a separate trust account or shall have an escrow agent for all such trust funds. The principal broker of the firm shall be solely responsible and accountable for all trust funds received by the firm and all deposits to or disbursements



from the trust account. The principal broker shall also be responsible and accountable for any funds delivered to an escrow agent selected by the principal broker, but shall not be responsible for funds delivered to an escrow agent selected by the parties. Except as authorized by Regulations 10.8 (i) and 12.2, the trust account shall be non-interest bearing. The name on the account shall include either “trust” or “escrow” and must be located in an institution insured by either the FDIC or

some other insuring agency of the federal government.”

- *Do you reconcile your trust account bank statement monthly?*

Commission Regulation 10.8 (g)(2) states:

“All trust account bank statements shall be reconciled in writing at least monthly and balanced to the total amount of trust funds deposited in the account which have not been disbursed. Copies of such reconciliations shall be kept by the broker for at least three (3) years or for such time as may be required by law, whichever is greater.”

Trust Funds:

- *Do you deposit trust funds only in your trust account?*

Commission Regulation 10.8 (a) states:

“Trust funds means and includes money or other things of value not belonging to the principal broker but which are received by the principal broker or any of the principal broker’s licensees in connection with a real estate transaction or real estate activity, including, without limitation, clients’ moneys, earnest moneys, rents, advance fees, deposits, etc. For purposes of the Arkansas Real Estate License Law and Commission Regulations, any funds deposited in a broker’s trust account are presumed to be trust funds.”



- *Do you maintain brokers’ funds in the trust account?*

Commission Regulation 10.8 (d) states:

“A principal broker may maintain the broker’s own funds in a designated trust account only when they are clearly identified as the broker’s deposit and only for the following purposes:

1) If the bank in which the account is maintained designates a specific minimum balance that must be maintained in order to keep the account open, the broker may maintain that amount in the account designated as the broker’s funds.

2) If the bank in which the account is maintained requires a service charge to be paid for the account, the broker may maintain a reasonable amount to cover that service charge in the account in the broker’s name, provided, however, that such amount shall not exceed the total of six (6) months service charges.”

Security Deposits:

- *Do your lease agreements show the amount of security deposits paid by the tenants?*
- *Are you holding those security deposits in a trust account?*

Commission Regulation 10.8 (h)(1) states:

“All security deposits made under a rental or lease agreement shall be deposited in the principal broker’s trust account, including those deposits made on property owned by any licensee licensed under the principal broker unless the licensee who owns the property has a written agreement with the tenant providing that the licensee may keep the security deposit in the licensee’s separate account. A copy of any such agreement shall be furnished to the principal broker by the licensee.”



Rents:

- *Do you deposit rental monies and other funds belonging to the client received into a trust account within three (3) days of receipt?*
- *Do you deposit clients’ moneys received or held in reserve for repairs into a trust account?*

Commission Regulation 10.8 (g)(1) states:

“No later than three (3) days following the execution of a real estate contract by both seller and buyer, all trust funds delivered to the principal broker, shall be either deposited in the trust account, delivered to an escrow agent, or deposited pursuant to a written agreement by the seller and buyer. All other funds delivered to the broker pending

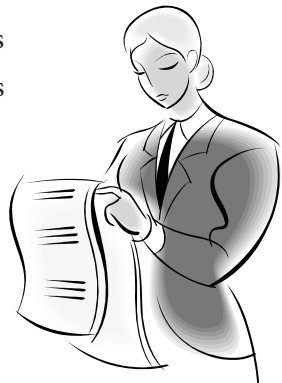
performance of any act shall be, no later than three (3) days, either deposited in the trust account, delivered to an escrow agent, or deposited pursuant to a written agreement by the seller and buyer. Should the third (3rd) day be a Saturday, Sunday, or legal holiday, then the third (3rd) day is extended to the next day which is not a Saturday, Sunday or legal holiday. The broker shall maintain an accounting of all funds delivered to the broker and shall keep a signed receipt for any funds the broker delivers to an escrow agent. The broker remains responsible for the funds if the broker selected the escrow agent, but not if the parties selected the escrow agent. A broker shall at all times keep detailed records of all funds coming into the broker's possession and all disbursements made by the broker."

Accounting:

Owner Summary Statements:

An accounting to the owner of rents or other funds received, belonging to the owner, and expenses paid from these funds.

- *Do you provide a monthly accounting to the owner?*
- *Do you maintain individual ledgers for each client, used to record rents or other funds received and payments made, and balance due client?*



Commission Regulation 10.8 (g)(1) states:

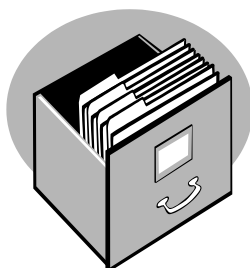
"...a broker shall at all times keep detailed records of all funds coming into the broker's possession and all disbursements made by the broker."

RECORD MAINTENANCE

- *Do you maintain a file containing invoices for all expenses charged to owners for maintenance of their property?*

Commission Regulations 10.7 (b)(2) and (3) state:

“Each principal broker shall maintain complete records pertaining to property managed for others. Such records shall include all contracts, financial transactions, receipts, statements, repair estimates and other documents relating to management of the property.



“All records required by Regulation 10.7 shall be maintained by the principal broker for three (3) years or such time as may be required by law, whichever is greater, and shall be open to inspection by and made available to the investigative staff of the Commission at the firm’s office or other location designated by the Commission.

All records required by Regulation 10.7 may be maintained in an electronic form provided that a copy of the records can be produced as required by this Regulation.”

- *Do you or does your firm or anyone or any entity related to you or your firm profit from maintenance activities performed on properties you manage?*
- *Are all profits received by you, your firm, or anyone or any entity related to you or your firm disclosed in writing to the owner of the property on which services are rendered?*

Commission Regulation 8.5 (c) states:

“When acting as agent in the sale or management of property, a licensee shall not accept any commission, rebate, profit, payment, compensation or other valuable consideration from any source in connection with the property without full written disclosure to the party represented by the licensee.”

AGENCY REPRESENTATION DISCLOSURE

- *Do all tenants receive written disclosure that your firm represents the owners of the properties?*

Commission Regulations 8.1 (a)(1) and (2)(b) and (c) state:

“In any real estate transaction in which a licensee is acting solely as agent for a seller or lessor, the licensee shall disclose to a potential buyer or lessee, or to the buyer’s or lessee’s licensed agent, the licensee’s agency relationship with the seller or lessor. Such disclosure shall be made in a timely manner under the particular circumstances so as to avoid to the extent possible eliciting or receiving from the prospective buyer or lessee information which would reasonably be expected to remain confidential and not disclosed to the seller or lessor, such as, for example, information concerning the real estate needs or motivations, negotiating strategies or tactics, or the financial situation of the potential buyer or lessee.

(2) When the disclosure is made to the licensed agent of the buyer or lessee, it is that licensee’s duty to convey the disclosure to the buyer or lessee in a timely manner.

(b) In all cases, disclosure shall be in writing, but may initially be made orally and reduced to writing at a convenient time subject to the requirements of Regulation 8.1 (c). Evidence of the disclosure shall be maintained by the licensee.



(c) In all cases, however, such disclosure must be made before the buyer or lessee signs any document related to the transaction, such as an offer or lease or rental agreement.”

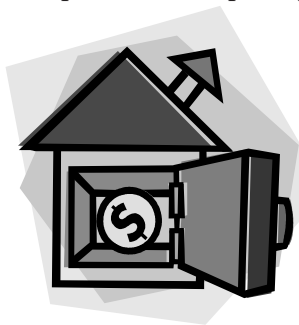
AGENT-OWNED PROPERTIES

- *Do agents licensed with your firm own rental properties?*
- *Are security deposits paid by tenants of rental properties owned by agents licensed with your firm held in your firm's trust account?*
- *If not, do you maintain written agreements signed by tenants of rental properties owned by agents licensed with your firm which authorize the real estate agent / owner to keep the security deposits?*



Commission Regulation 10.8 (h)(1) states;

“All security deposits made under a rental or lease agreement shall be deposited in the principal broker's trust account, including those



deposits made on property owned by any licensee licensed under the principal broker unless the licensee who owns the property has a written agreement with the tenant providing that the licensee may keep the security deposit

in the licensee's separate account. A copy of any such agreement shall be furnished to the principal broker by the licensee.

PROPERTY MANAGEMENT REGULATIONS

10.18 Property management definitions.

(a) "Audit trail" means a documented history of a financial transaction by which the transaction can be traced to its source.

(b) "Occupant" means a person who rents a property on a nightly basis.

(c) "Tenant" means a person who rents a property on other than a nightly basis.

(d) "Property Manager" means a licensed principal broker or designated executive broker who performs property management activities pursuant to A. C. A. § 17-42-103(9)

(e) This section does not apply to any residential property management program operated or regulated by a federal or state act or agency which includes specific record keeping requirements that the commission determines are substantially equivalent to or greater than that required by this section.

10.19 Property management agreement.

(a) A principal broker or designated executive broker must not engage in the management of residential rental real estate without a written, current property management agreement between the owner and the property manager. A property management agreement must include the following:

(1) Name, address and other contact information for property owner;

(2) The address or legal description of the property to be managed;

(3) The duties and responsibilities of the property manager and owner;

(4) The authority and power given by the owner to the property manager;

(5) The management fees, application fees, screening fees, rebates, discounts, overrides and any other form of compensation to be received by the property manager for management of rental real estate including when such compensation is earned and when it will be paid;

(6) A description of the monthly statements of accounting the property manager will provide to the owner;

(7) The duration of the agreement, rollover provisions, renewal clauses or automatic extensions, if any;

(8) The method by which the property management agreement can be terminated and any other terms and conditions of the agreement;

(9) Signatures of the property manager or executive broker and property owner; and

(10) The date of the agreement.

(b) The property manager must promptly deliver a legible copy of the fully executed property management agreement, and any addenda or amendments, to the owner.

10.20 Tenant agreement.

(a) A property manager shall not lease property he manages without a written agreement with the tenant.

(b) Each lease or rental agreement for residential real estate managed by the property manager must contain the following:

(1) The name and business address of the property manager and his firm;

(2) The name, address and other contact information of the tenant;

(3) The mailing address or unit number of property being rented or leased;

(4) Payment conditions and amounts pertinent to the rental or lease, and the rental or lease term;

(5) The amount of and the reason for all funds paid by the tenant to the property manager at the outset of the agreement including funds for rent, security deposits, and any other fees;

(6) The location where or entity by whom security deposits will be held;

(7) Method by which tenant will be notified in the event of termination of property manager's property management agreement to include handling of tenant's security deposit; and

(8) Signatures of the current property manager or current executive broker and tenant.

(c) A tenant's refusal to sign the lease agreement shall not constitute noncompliance by the property manager with the terms stated herein.

(d) A property manager may not expend any tenant security deposits for payment of any expenses or fees not otherwise allowed by the tenant's rental or lease agreement.

10.21 Property management accounting and recordkeeping.

(a) A property manager must retain records of all deposits in a manner in which they are traceable to the owners' and tenants' ledgers. A property manager must retain records identifying the amount of and purpose of each disbursement entered into the owner's and tenants' ledgers.

(b) The property manager shall disclose to the owner, in writing, the property manager's use of any employees or a business in which the property manager or any persons licensed under him has a pecuniary interest to provide billable services to the owner's property.

10.22 Property management owner ledgers.

(a) A property manager must prepare and maintain at least one separate owner's ledger for each property management agreement, for all monies received and disbursed.

(b) If a property is utilized for nightly rentals, a separate ledger account must be maintained for that property. Each occupant of the property must be identified, including the dates of occupancy and amounts paid.

(c) If a property manager has access to a separate banking or

escrow account owned or controlled by the property owner pursuant to a property management agreement, the property manager may maintain either a record of receipts and disbursements or check register in lieu of an owner's ledger.

(d) All owner ledgers must contain the property manager's name, identification of property being managed, and the following information for each deposit of funds:

(1) The amount of funds received;

(2) The purpose of the funds and identity of the person who tendered the funds;

(3) The check number, cash receipt number or a unique series of letters and/or numbers that establish an audit trail to the receipt of funds;

(4) The date the funds were deposited; and

(5) The balance of each recorded entry.

(e) For each disbursement of funds, all owner ledgers must contain the following information:

(1) The date the funds were disbursed;

(2) The amount of funds disbursed;

(3) The check number or bank-generated electronic tracking number;

(4) The payee of the disbursement;

(5) The purpose of the disbursement; and

(6) The balance after each recorded entry.

(f) If more than one property is managed for a property owner, each entry for deposit or disbursement must identify the applicable property rather than just the owner. If a property management agreement with an owner allows the property manager to use funds collected for one property to apply to expenses of another property owned by the same owner, an overall compilation/accounting shall be prepared for the owner.

(g) At a minimum, once each month, a report showing all receipts and disbursements for the account of the owner must be provided to the owner. A copy or electronic version of each such report must be available through the property manager's records system.

10.23 Property management tenant ledgers.

(a) A property manager must prepare and maintain at least one tenant's ledger for each unit from whom the property manager has received any funds under a property management agreement, whether or not the tenant has executed a written rental or lease agreement at the time of payment of funds to the property manager.

(b) All tenant ledgers must contain the tenant's name and the legal description or physical address of the property sufficient to distinguish that property from other rental units, or a unique series of letters or numbers that establishes an audit trail.

(c) For each deposit of funds, all tenant ledgers must contain the following information:

(1) The amount of funds received;

(2) The purpose of the funds and identity of the person who tendered the funds;

- (3) The check number, cash receipt number or a unique series of letters or number that establishes an audit trail to the receipt of funds;
- (4) The date the funds were received; and
- (5) The balance after each recorded entry.
- (d) For each disbursement of funds, all tenant ledgers must contain the following information:
 - (1) The date the funds were disbursed;
 - (2) The amount of funds disbursed;
 - (3) The check number or bank-generated electronic tracking number;
 - (4) The payee of the disbursement;
 - (5) The purpose of the disbursement; and
 - (6) The balance after each recorded entry.
- (e) In lieu of an individual tenant ledger a property manager may prepare and maintain a separate record of the receipt of funds from prospective tenants who do not become tenants after such payment.

10.24 Property management cash receipts.

- (a) If a property manager chooses to accept cash, he or his designee must prepare a legible written receipt for any cash funds received under a property management agreement or from a prospective tenant. A copy of the receipt must be maintained in the property manager's records. Cash receipts must be consecutively pre-numbered, be printed in at least duplicate form and must contain:
 - (1) The date of receipt of cash funds;
 - (2) The amount of the funds;
 - (3) The reason for payment or collection of the funds received;
 - (4) The identity of the property for which the cash funds were received;
 - (5) The tenant's name;
 - (6) The payer of the funds if different than the tenant;
 - (7) The payee of the funds; and
 - (8) The name and signature of the individual who actually received the cash and prepared the receipt.

REFERENCE MATERIALS

The Arkansas Real Estate Commission (AREC) has free reference materials available to licensees. To obtain copies of the following reference guides, call the AREC at 501-683-8010.

- *“Trust Account Record Keeping Guide”*
- *“Regulation 8 & 10 Quick Reference Guide”*
- *“Consumer and Licensee Guide”*
- *“Principal and Executive Brokers’ Self-Evaluation Guide”*
- *“Agency Representation Brochure”*
- *“Real Estate License Law & Regulations”*

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