

Table of Contents

PART I. INTRODUCTION

CHAPTER 1. PROFESSIONALISM

- § 1 The broker as a professional
- § 1.25 Checklist—Actions involving real estate brokers *[New]*
- § 2 Form: Commission Agreement—Sole broker leasing premises to tenants *[New]*
- § 2.25 Form: Nonexclusive brokerage agreement *[New]*
- § 2.50 Form: Simple commission agreement *[New]*
- §§ 3 to 10 *[Reserved]*

PART II. BROKER LICENSING AND REGULATION

CHAPTER 2. ORIGINAL LICENSING

- § 11 License requirement
- § 11.50 Statutory and municipal regulations *[New]*
- § 12 Real estate brokers and salespersons
- § 13 Real estate broker—Definition
- § 14 Real estate broker—Specific activities
- § 15 Real estate broker—Other definitions
- § 16 Real estate broker—Summary
- § 16.50 Auction Agreement with Broker *[New]*
- § 17 Real estate salesperson—Definition
- § 18 Broker-salesperson—Definition
- § 18.50 Salesperson Employment Agreement *[New]*
- § 18.75 Independent Contractor Agreement for Sales Associate (Broker) *[New]*
- § 19 Real estate
- § 20 Business opportunity broker
- § 21 Single transaction
- § 22 Finders
- § 23 Rental listing agencies
- § 25 Exemptions from licensure
- § 26 Exemptions from licensure—Other exemptions
- § 27 Exemptions from licensure—Summary
- § 28 For a fee and for another
- § 29 Attorney-broker conflicts

CHAPTER 3. ORIGINAL LICENSING, RELICENSING AND REVOCATION

- § 41 Licensing agency

- § 42 Licensing procedure
- § 42.50 Licensing procedure *[New]*
- § 43 Qualifications—Examinations
- § 44 Qualifications—Age, citizenship and residency
- § 45 Qualifications—Education and experience
- § 46 Qualifications—Competency and fitness
- § 47 Brokerage firm licenses
- § 48 Other licenses
- § 49 Nonresident licenses
- § 50 Miscellaneous operational requirements
- § 51 Continuing education requirements
- § 52 Expiration and renewal of licenses
- § 53 Suspension and revocation—In general
- § 54 Suspension and revocation—Hearing and procedure
- § 55 Suspension and revocation—Improperly obtained license
- § 56 Suspension and revocation—Deceptive, fraudulent and other endangering acts
- § 57 Suspension and revocation—Failure of administrative requirements *[Retitled]*
- § 58 Suspension and revocation—Miscellaneous
- § 59 Suspension and revocation—Summary

PART III. BROKERAGE AGREEMENTS AND COMPENSATION

CHAPTER 4. CLASSIFICATION OF BROKERAGE AGREEMENTS

- § 72 Compensation and commission
- § 72.25 Notice of commission rights of real estate broker *[New]*
- § 72.50 No real estate broker's commission—Provision in agreement *[New]*
- § 72.60 Defenses *[New]*
- § 72.75 Commission claim—Sample jury instruction *[New]*
- § 73 Productive activity—General or open listing
- § 74 Productive activity—General or open listing—Theory
- § 75 Productive activity—Exclusive listings
- § 76 Productive activity—Exclusive listings—Theories
- § 77 Productive activity—Exclusive listings—Theory A
- § 78 Productive activity—Exclusive listings—Theory B
- § 79 Productive activity—Exclusive listings—Theory C
- § 83 Productive activity—Exclusive listings—Construction
- § 84 Productive activity—Exclusive listings—Reserved prospect
- § 86 Exclusive Sales Listing Agreement—Use of commercially reasonable efforts
- § 87 Exclusive Right-to-Sell Contract *[Retitled]*
- § 87.25 Exclusive Buyer Broker Agreement *[New]*
- § 87.50 Exclusive listing agreement of property—For sale and/or lease *[New]*
- § 88 Required result—Ready, willing and able buyer
- § 89 Required result—Modification of the required result
- § 91 Purpose

TABLE OF CONTENTS

- § 93 Combination of listings
- § 94 Exclusive listing agreement—Residential lease with purchase option *[New]*
- § 94.50 No leasing commission agreement *[New]*

CHAPTER 5. FORMAL REQUIREMENTS

- § 101 Compensation—Basic elements of recovery
- § 101.50 Agreement and capacity *[New]*
- § 101.75 Broker agreement to sell real property and business *[New]*
- § 102 Writing—In general
- § 103 Brokerage statute of frauds *[Retitled]*
- § 104 Brokerage statute of frauds—Real estate commission rules
- § 105 Brokerage statute of frauds—Required signatures
- § 106 Brokerage statute of frauds—Required description
- § 107 Brokerage statute of frauds—Other required terms
- § 108 Brokerage statute of frauds—Transactions applicable
- § 109 Brokerage statute of frauds—Other writings; estoppel
- § 110 Brokerage statute of frauds—Part performance
- § 110.50 Brokerage Statute of Frauds—Substantial compliance *[New]*
- § 111 Brokerage statute of frauds—Quantum meruit
- § 112 Brokerage statute of frauds—Conflict of laws
- § 113 Where no writing required—In general
- § 114 Where no writing required—Oral listing; enforceability
- § 115 Where no writing required—Ratification; implication
- § 116 Where no writing required—Termination *[Retitled]*
- § 117 Where no writing required—Quantum meruit
- § 118 Listing agreement—Important terms
- § 119 Listing agreement—Interpretation
- § 120 Listing agreement—Parol evidence *[Retitled]*
- § 121 Necessity of broker's license—In general
- § 122 Necessity of broker's license—Time at which license necessary
- § 123 Necessity of broker's license—Business opportunity brokers
- § 124 Necessity of broker's license—Isolated transactions
- § 125 Necessity that other persons be licensed
- § 126 Necessity of local licensing
- § 127 Necessity of license—Conflict of laws *[Retitled]*
- § 129 Necessity of license—Quantum meruit

CHAPTER 6. REQUIRED RESULT (READY, WILLING AND ABLE BUYER)

- § 142 Ready, willing and able—The standard
- § 142.50 Complaint by real estate broker for commission based on ready, willing and able buyer *[New]*
- § 143 Ready and willing; definitions
- § 144 Ready and willing—On listing terms (at offer)
- § 145 Ready and willing—On other satisfactory terms (at contract)
- § 146 Ready and willing—At closing
- § 147 Able—Definition
- § 148 Able—Down payment

- § 149 Able—Future or deferred payments
- § 150 Able—Buyer default—Traditional rule
- § 151 Able—Buyer default—Determined at closing
- § 152 Able—Buyer default—Another rule *[Retitled]*
- § 153 Able—Buyer default—Comment
- § 154 Able—Broker's duty to disclose buyer's financial ability
- § 155 Able—Mortgage contingency clause under traditional rule
- § 157 Seller nonperformance
- § 158 Seller nonperformance—Broker has notice of defect
- § 159 Seller nonperformance—Special brokerage agreement terms
- § 160 Buyer liability for commission—General contract theories
- § 161 Buyer liability for commission—Implied contract
- § 162 Buyer liability for commission—Tort theories
- § 163 Forfeited earnest money—Broker's rights
- § 164 Forfeited earnest money—Agreement to share
- § 165 Listing agreement conditions—Earned at closing, etc.
[Retitled]
- § 166 Listing agreement conditions—Earned as mortgage paid
- § 167 Other specified results

CHAPTER 7. PROCURING CAUSE

- § 181 Introduction
- § 182 Procuring cause—General definitions
- § 183 Broker vs. another broker
- § 184 Broker vs. another broker—Buyer's warranty to protect seller
- § 185 Broker vs. another broker—Effect of a multiple listing
- § 186 Broker vs. seller
- § 187 Broker vs. seller—Broker brings parties together
- § 188 Broker vs. seller—Seller's intervening effort
- § 189 Abandonment of negotiations
- § 190 Abandonment of negotiations—Options
- § 191 Protective (extension) clauses—Generally
- § 192 Protective (extension) clauses—Limitations on enforcement
- § 193 Protective (extension) clauses—Causal connection
- § 194 Protective (extension) clauses—Time of original introduction or negotiations
- § 195 Protective (extension) clauses—As waiver of procuring cause
- § 196 Need to notify seller when buyer is obtained
- § 197 Exclusive listing—Sale by owner or another broker
- § 198 Rights of first refusal *[New]*

CHAPTER 8. BROKER COMPENSATION AND LISTING TERMINATION

- § 212 Commission—When earned
- § 213 Commission—Amount
- § 213.50 Schedule of sale and lease commissions *[New]*
- § 214 Reasonable value of services
- § 215 Damages—Unauthorized sale or withdrawal
- § 215.50 Expectation damages—No written contract required *[New]*
- § 216 Who must pay the broker's compensation

TABLE OF CONTENTS

§ 217	Method of collection
§ 218	Multiple listings—Definitions
§ 219	Multiple listings—Brokers' rights to compensation
§ 220	Multiple listings—Arbitration of broker disputes
§ 221	Salesperson's right to compensation
§ 222	Termination—Due to expiration of term
§ 223	Termination—Withdrawal or prior sale
§ 224	Termination—Due to rescission
§ 225	Termination—Due to death of owner or broker
§ 226	Brokerage Agreement—Equal division of commission between brokers <i>[New]</i>
§ 226.25	Exclusive brokerage listing agreement <i>[New]</i>
§ 226.50	Complaint against real estate broker for intentional interference with property rights, based on misrepresentation of real property to buyer <i>[New]</i>
§§ 227 to 240	<i>[Reserved]</i>

CHAPTER 9. BROKERS' TORT REMEDIES

§ 242	Interference with economic relationships
§ 243	Interference with economic relationships—Parties defendant
§ 244	Interference with economic relationships—Courts denying recovery
§ 245	Interference with economic relationships—Statute of frauds—Sellers
§ 247	Interference with economic relationships—Elements
§ 248	Interference with economic relationships—Miscellaneous
§ 249	Interference with economic relationships—Damages
§ 249.50	Tortious interference with prospective contract or business relationship <i>[New]</i>
§ 250	Fraud
§ 251	Conspiracy
§ 251.50	Miscellaneous <i>[New]</i>
§ 251.70	Complaint for constructive trust where it is alleged real estate sale was fraudulently induced <i>[New]</i>

PART IV. BROKERS' OBLIGATIONS

CHAPTER 10. OBLIGATIONS TO THE PRINCIPAL

§ 261	Introduction
§ 261.50	Obligations to the principal generally <i>[New]</i>
§ 262	Fiduciary duties
§ 262.50	Complaint against real estate broker for breach of fiduciary duties <i>[New]</i>
§ 263	Fiduciary duties—Purchase by broker
§ 264	Fiduciary duties—Purchase by broker's associates or family
§ 265	Fiduciary duties—Disclosure of ultimate buyer
§ 265.50	Property Condition Disclosure Form <i>[New]</i>
§ 266	Fiduciary duties—Failure to account
§ 267	Fiduciary duties—Net listings
§ 268	Fiduciary duties—Dual agency

- § 269 Fiduciary duties—Disclosure of buyer’s financial background
- § 270 Fiduciary duties—Disclosure of other significant facts
- § 271 Fiduciary duties—Presenting offers
- § 272 Fiduciary duties—Reasonable care and skill
- § 273 Fiduciary duties—Good faith
- § 274 Fiduciary duties—Loyalty
- § 275 Fiduciary duties—Statutory and regulatory obligations
- § 275.50 Fiduciary Duties—Statutory and Regulatory Obligations—
Statutory Disclosure Form *[New]*
- § 276 Fiduciary duties—Principal’s remedies
- § 276.50 Duties of “Transaction” Brokers *[New]*
- § 277 Tort actions—Fraud and misrepresentation
- § 278 Tort actions—Malpractice
- § 279 Tort actions—Tortious interference with contractual
relationships *[New]*
- § 280 List of duties owed by a [name of state] real estate licensee
[New]
- §§ 281 to 290 *[Reserved]*

CHAPTER 11. OBLIGATIONS TO OTHER PERSONS

- § 291 Introduction
- § 292 Fiduciary duties—In general *[Retitled]*
- § 293 Fiduciary duties—Duties to others *[Retitled]*
- § 294 Fiduciary duties—Comment *[Retitled]*
- § 295 Breach of contract
- § 296 Fraud
- § 297 Fraud—Intentional—Affirmative misrepresentation *[Retitled]*
- § 298 Fraud—Intentional misrepresentation by omission
- § 299 Fraud—Negligent misrepresentation—Duty
- § 300 Fraud—Negligent affirmative misrepresentation
- § 301 Fraud—Negligent misrepresentation by omission
- § 302 Duty to public at large *[Retitled]*
- § 303 Consumer protection acts
- § 304 Conflicts of interest
- § 305 Malpractice
- § 306 Damages
- § 307 Discrimination—In general
- § 308 Discrimination—Civil Rights Act of 1866
- § 309 Discrimination—Fair Housing Act of 1968
- § 310 Discrimination—State fair housing legislation
- § 311 Antitrust considerations
- § 312 Liability for personal injury *[New]*
- § 313 Liability for negligence *[New]*
- § 313.25 Complaint for fraud, misrepresentation, and breach of fidu-
ciary duty based on purchase of apartment building *[New]*
- § 314 Defenses *[New]*

CHAPTER 12. RECOVERY FUNDS AND TRUST ACCOUNTS

- § 321 Recovery funds—In general

TABLE OF CONTENTS

- § 322 Recovery funds—Establishment and funding
- § 323 Recovery funds—Persons protected
- § 324 Recovery funds—Transactions covered
- § 325 Recovery funds—Limits on recovery
- § 326 Recovery funds—Procedure
- § 327 Recovery funds—Effect on broker
- § 328 Trust accounts—In general
- § 328.50 State regulations for real estate brokers for managing trust
accounts and trust funds *[New]*
- § 329 Trust accounts—Requirements and operation
- § 330 Trust accounts—Disbursal of funds
- § 331 Trusts accounts—Discipline for violation *[Retitled]*
- § 332 Complaint to recover deposit on contract to purchase land
where the terms of the memorandum not sufficient to
satisfy statute of frauds *[New]*

PART V. REAL ESTATE CLOSINGS AND INCOME TAXATION

CHAPTER 13. CLOSINGS AND CHECKLISTS

- § 352 Form—Uniform settlement statement (HUD-1)
- § 352.10 Form—Settlement Statement—Optional Form for Transac-
tions Without Sellers (HUD-1A) *[New]*
- § 354 Loan closing checklist *[New]*
- § 354.50 Closing checklist *[New]*
- § 354.75 Checklist in representing purchaser at fee closing *[New]*
- § 355 Escrow Agreement—Postponed exterior improvements *[New]*

CHAPTER 14. INCOME TAXATION OF SOME BROKERED REAL ESTATE TRANSACTIONS

- § 361 Introduction
- § 362 Sale of personal residence—Section 121 *[Retitled]*
- § 363 Sale of personal residence—Cost of replacement property
[Retitled]
- § 364 Sale of a personal residence—Statute of limitations
- § 365 Sale of personal residence—Sale by person 55 years of age or
older *[Retitled]*
- § 366 Sale of personal residence—Effects of Tax Reform Act of 1986
[Retitled]
- § 366.50 Sale of personal residence *[New]*
- § 367 Like kind exchanges
- § 368 Like kind exchanges—Effect on basis
- § 369 Like kind exchanges—Multiple party exchanges
- § 370 Like kind exchanges—Effects of Tax Reform Act of 1986
- § 371 Installment sales
- § 372 Installment sales—Election out
- § 373 Installment sales—Contingent payment sales
- § 374 Installment sales—Open transaction
- § 375 Installment sales—Wrap-around mortgages

REAL ESTATE BROKERAGE LAW

§ 376	Installment sales—Disposition of installment obligations
§ 377	Installment sales—Repossession
§ 378	Installment sales—Miscellaneous
§ 379	Installment sales—Effects of Tax Reform Act of 1986
§ 382	Brokerage commissions as expenses—Special provisions
§ 383	Moving expenses
§ 384	Real estate taxes
§ 385	Real estate taxes—Apportionment on closing
§ 388	Interest expense—Construction period interest and taxes
§ 389	Interest expense—Investment interest
§ 390	Interest expense—Effects of the Tax Reform Act of 1986 <i>[Retitled]</i>

Table of Laws and Rules

Table of Cases

Index