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Audit Preparation for Brokers

It's a fine Missouri day and you wake up to the sound of cackling squirrels and singing birds. A wonderful day to sell real estate. You grab your morning coffee, or cappuccino depending on what kind of year you've had, and head for the office. Arriving there, you find that a thick black cloud has covered the sun. You are greeted with a letter from the Real Estate Commission. It seems that you are the lucky recipient of a random audit letter. Before you allow panic to set in, read on. This article is meant to prepare Missouri real estate brokers and entities for a random examination and help alleviate miscommunication between the examiner and broker. The information contained in this article is merely an outline of the areas covered by a random examination. Every examiner may not follow this process step by step, but he or she will examine all of the areas in the outline.

As explained in the letter, you will receive a courtesy call from the examiner prior to the examination. When possible, the examiner will try to accommodate a broker's schedule. During this call the examiner will try to get an idea of the volume of activity that he or she will encounter and estimate the time needed to complete the audit. Due to varying workloads, the lead time of this phone call will vary.

When the examiner arrives at your office, he or she will conduct a brief entrance interview. The examiner will discuss various issues related to the rules and regulations and try to get an idea of how the office handles general record keeping. Bear in mind that there is no regulation which requires a broker to maintain records in a particular manner. The record keeping in individual offices varies widely and the examiner will try to make sure that he or she is speaking the same language as the broker or bookkeeper. The examiner will observe your business sign and office hours. You will also need to have your wall licenses available to be compared to the examiner's list of current licensees associated with your brokerage.

After the examiner conducts the entrance interview, you will need to provide the records for all current escrow accounts. The examiner will typically request these records for the twelve months prior to the current date. You will need to provide the following records with respect to the escrow account(s):

1. All bank statements and enclosures issued by the bank over the past twelve months.
2. The checkbook and register or stubs for the past twelve months.
3. The deposit records pertaining to the account. The Commission is aware that some banks will no longer return deposit tickets with the bank statements. If this is the case, you will need some type of records which can be compared to the bank statements and which will identify the real estate transaction related to each deposit.
4. Brokers' reconciliations pertaining to the escrow account are not required, although they can be very helpful to both the examiner and the brokerage.
5. With the widespread use of computerized bookkeeping systems, the brokerage may provide the examiner with a computerized check and deposit register. It is helpful to the examiner if the check register and deposit register are in separate reports.

The examiner will examine the bank statements and deposit tickets for the examination period. The canceled checks will be compared to the bank statements and corresponding check stubs or register. The account will be reconciled to the current date or a date which corresponds to the brokerage record keeping system. The examiner will compare the liabilities to the account and the current balance to determine the adequacy of the account for the reconciliation date. It is imperative that the brokerage be able to identify any funds deposited for the maintenance of the escrow account. All overages, shortages, or irregularities over the last twelve months will be noted. The purpose of this portion of the audit is to take a snapshot of your brokerage on that particular day to ensure that all funds maintained by the brokerage and related to real estate transactions are deposited into a registered escrow account. The examiner will further determine the brokerage has written authorization for all funds maintained in the escrow account.

When the account(s) have been reconciled, the brokerage will need to provide the examiner with all pending contracts. The brokerage should also notify the examiner of all funds held which are in dispute. The brokerage should provide all documentation available for any funds currently maintained in the escrow account. The pending contracts will be examined for compliance with all applicable rules and regulations. Every

deposit for a transaction will be verified and compared to the contract for compliance.

If the brokerage handles the servicing of any loans, the examiner will need to see the written authorization to do so. The brokerage should also be able to provide the liability records and identify all funds held for this activity.

The brokerage will need to provide a total of all closed transactions for the past twelve months. This total is merely the total number of transactions and not the total dollar figure. The examiner will then examine a portion of the closed transactions. The closed transactions will also be examined for compliance with all applicable rules and regulations. The examiner will review the contracts (including all addendums and attachments) and closing statements. These items should be maintained in the closed file regardless of the firm's role as listing party, selling party or both. The closing statements will also be required regardless of who the closing agent was. The transaction deposits and disbursements will be traced and documented. They will then be compared to the contract for compliance. When the closed transactions are completed, the examiner will usually be able to return the sales escrow account records.

The brokerage will then need to provide a total of all current listing agreements. The examiner will examine a portion of the current listing agreements and compare all or some of the listings to recent advertisements. The brokerage should be able to provide the examiner with all current publications in which the current listings are advertised. The listings will be examined for compliance with all applicable rules and regulations.

The examiner will reconcile all property management escrow accounts in the same manner as the sales escrow accounts. The brokerage will then need to provide all liability records for the account(s). These liability records may include the following: *(continued on page 2)*

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1. All current management agreements or other written authorization to manage property.
2. Security deposit, liability records. These can be in ledger form; computerized form, or any record which the brokerage uses to identify the funds held for security deposits.
3. Property management liability records. These records can be in the same form as security deposit liability records. The brokerage will need to be able to identify all funds held on behalf of all owners.
4. All current leases. The brokerage should also be able to provide the leases for any tenant who may have vacated the property, but for whom funds are still in an escrow account.

All current management agreements will be examined for compliance with applicable rules and regulations. The reconciled balance of the property management escrow account(s) will be compared to the account liability records to determine their adequacy. All or a sample of the leases will be examined and compared to the security deposit liability records and the corresponding escrow account(s) to determine adequacy. All overages, shortages, or irregularities will be noted over the examination period.

The examiner will now be ready to conduct an exit interview with the broker or designated broker. The broker or designated broker will be asked to sign the examination work papers. The brokerage may have any individuals it deems necessary in attendance at the exit interview. During the exit interview, the examiner will review the entire audit. The brokerage will be able to view all copied documentation and work papers. The broker should feel free to give the examiner any information which may not have been apparent by examination of the files. The exit interview will provide the brokerage with an idea of the scope of the examination and any irregularities noted by the examiner. The examiner can not give the broker an idea of how he or she has fared. In comparison with other examinations or speculate as to what action if any the Commission will take after review of the examination results. The examiner is merely a fact finder for the Commission. He or she is not directly involved in any decision to discipline a licensed real estate broker or entity.

Once the exit interview has been completed, the examiner will be off to his or her next destination.

After the audit has been completed, the examiner will prepare a detailed report for review by the supervisory staff. In some cases the examiner will again contact the brokerage for additional documentation or clarification. The time required to prepare a report for review by the Commission depends on many factors and will vary widely. The examiner can not provide a time frame for review by the Commission.

At its regular meetings, which occur approximately every 6 weeks, the Commission will review the results of the examination and respond accordingly.

Then, hopefully, the sun will once again glisten through your office windows, the air will be filled with the sounds of cackling squirrels and singing birds. ...and you can begin to breathe again.

Disciplinary Actions

BAUER, ROBERT G.

Crestwood, MO
Revoked June 27, 1995
Violations--339.100.2 (15) RSMo

In May 1992, Bauer was convicted in the Circuit Court of St. Louis County on seven counts of sodomy on five boys under the age of fourteen. On March 31, 1995, it was determined by the Administrative Hearing Commission that Bauer did not possess the qualification of a good reputation of honesty or integrity in the community. The Administrative Hearing Commission also determined that Bauer was convicted of pedophilic acts and was not competent to conduct real estate business in a manner to safeguard the public interest.

CALLOW, JOHN A.

Oregon, MO
By joint stipulation With the MREC, one year probation from August 16, 1995 to August 16, 1996.
Violations--339.100.2 (14) RSMo 1986

An audit of the licensee's escrow account and business records revealed that the licensee: (1) failed to disclose his agency relationship in writing to the buyer, (2) failed to obtain the required signatures or initials of the buyer and seller on the contract, (3) failed to obtain the date of the buyer's and seller's signatures or initials on the contract, and (4) failed to make timely disbursements from escrow funds and/or commingled personal funds with escrow funds after closing.

DAWAR, VIJAY K.

Overland Park, KS
By joint stipulation with the MREC, six months suspension from January 25, 1996 to July 25, 1996, followed by three years probation from July 25, 1996 to July 25, 1999.
Violations-339.100.2(2), (9) and (17) RSMo 1994

On October 6, 1993, Dawar pled guilty to Federal Program Fraud in the United States District Court, Western District of Missouri. He was sentenced to two months in a half way house and three years supervised release.

DEMAY, WILLIAM A.

Olathe, KS
By joint stipulation with the MREC, DeMay's license was revoked on January 26, 1996.
Violations-339.100.2(15), (17) and (19), RSMo 1994

On May 5, 1995, in the District Court of Johnson County, Kansas, DeMay pled guilty to one count of attempted indecent liberties with a child under fourteen years of age, a felony violation of Kansas law

JOHNSON, VIRGIL

St. Louis, MO
By joint stipulation with the MREC, Six months suspension from 4-27-95 to 10-27-95 followed by five years probation, 10-27-95 to 10-27-2000.
Audit violations-339.100.2 (2), (4), (14) & (18), 339.105.1 & 3, RSMo and 4 CSR 250-4.030(1), 250-8.010(2), 250-8.060(1), 250-8.090(2), 250-8.095(1)(B), 250-8.100(3), 250-8.120(1), 250-8.150(1) & (2), 250-8.160(1), 250-8.220(1), (3) & (8).

Violations found during various investigations: 339.100.2(1), (2), (3), (6), (12), (14) & (18), 339.105.1,3 & 4, RSMo and 4 CSR 250-8.090(1), (2); (4) & (5), 250-8.095(f)(B) & (2)(B), 250-8.120(1) & (4), 250-8.130(2), 250-8.170(1) and , 250-8.220(1) (A), (B),(C), (D), (E), (F), (G), (H) & (I)

An audit of licensee's escrow account and business records revealed the following: (1) A business sign was not displayed outside the licensee's regular place of business; (2) The broker failed to display the wall license of all licensed associates upon request; (3) The broker failed to retain voided checks and bank statements; (4) Overdrafts were found in the escrow account and the account had a negative balance of \$189.01; (5) Changes to the sales escrow account were not initialed and dated by all parties; (6) Written agency disclosure was not provided to the buyer; (7) Broker failed to retain copies of the closing statements; (9) The broker failed to indicate the related transaction on the check or corresponding check stub; (10) The buyer's signature was not dated on the contract; (11) The listing agreement did not contain a definite sales price; (12) The listing agreement did not contain an effective date; (13) Changes to the listing agreement were not initialed by the seller; (14) The broker did not maintain a separate property management escrow account; and (15) The broker did not maintain deposit records or rental receipts.

Johnson (1) showed property without obtaining written authorization from the property owner, (2) entered into an oral net listing with one of the property owners, (3) sold the property and was managing it without a management agreement, (4) deposited earnest money into the company's general operating account, (5) disbursed earnest money funds without obtained written authorization from all parties to the transaction, (6) accepted funds for a transaction without authority to do so, (7) held a listing agreement with an owner which did not include a sales price, commission, or expiration date or identify the type of listing, (8) initialed changes to a contract on behalf of a buyer, (9) conducted repairs and made changes to a property without the consent of the property owner, and (10) failed to disclose his ownership interest on a sales contract when he sold his own property, purchased with FHA financing. At closing, he represented that he had had several inspections conducted, but inspection reports could not be authenticated or verified.

RANDOLPH, JOSIE L.

Leawood, KS
By joint stipulation with the MREC, three years probation from January 26, 1996 to January 26, 1999.
Violations-339.100.2(1), (2), (3) and (14) RSMo Supp.1993

Without having any written authorization, Randolph managed a property owned by her mother and brother. Randolph also found an investor for 50 per cent ownership interest in the property. Randolph advertised the property and negotiated a contract for deed with a buyer, and she received a \$500 down payment and \$300 per month thereafter. Randolph collected the payments until the property was foreclosed upon on March 16, 1992. She also accepted a payment from the buyer after the property had been lost

in foreclosure. Randolph did not deposit any of the monies she collected into an escrow account. Randolph did not inform the investor that the property had been foreclosed upon until March 1993, approximately a year later. Randolph admits that she owes the investor \$2,000 and has agreed to repay the money in payments of \$200 per month.

SUTHERLAND, DIANA L.

Camdenton, MO

By joint stipulation with the MREC, six months probation from October 4, 1995 through April 4, 1996.

Violations-339.100.2(3) and (14) RSMo 1994

At the closing of a transaction, Sutherland, who was participating as a buyer's agent, received a check from the listing broker for the selling portion of the sales commission. The check was made payable to Sutherland. Sutherland cashed the check and failed to submit any or all of the funds to her broker. Sutherland later returned the full amount of the commission check to the listing broker.

VOMUND, LARRY L.

Martinsburg, MO

By Memorandum and Order, one year suspension from February 5, 1996 to February 5, 1997, followed by five years probation from February 5, 1997 to February 5, 2002.

Violations-339.100.2(17), RSMo 1994

On July 1, 1993, Vomund was charged with Bank Fraud in the United States District Court. Over a sixteen month period Vormund kited checks to support his feeder pig business. On May 20, 1994, Vomund pled guilty to the charge.

Governor Appoints Two Commissioners

Governor Mel Carnahan has appointed Barbara R. Stuckey for a term of service on the Commission ending October 13, 2000. Senior Vice President with J.D. Reece Realtors in Kansas City, Ms. Stuckey has been licensed as a broker since 1985. She is active in the Metropolitan Kansas City Board of Realtors, and has served as a director at both the state association and the national association levels. A lifetime member of the Missouri Association of Realtors Million Dollar Club, Ms. Stuckey holds the CRS (Certified Residential Specialist) designation and is a member of the Women's Council of Realtors. Her community involvement includes membership in the Platte County Women's Exchange, Platte County Eleemosynary Society and the Historical Society, and the Parkville Fine Arts Association.

Mary L. Vernassie, whose term of service extends until February 17, 2000, is Vice President/Manager with J.D. Reece Company, where she manages an office of 45 licensees. Ms. Vernassie has been involved in real estate management since 1972, when she was first licensed as a broker, owning her own company for a number of years. Throughout her real estate career she has been active in the Metropolitan Kansas City Board of Realtors where she has held a number of offices including Board President. Also active in the state and national Realtor organizations, she has served in a number of

capacities including National Director, State Director, and State Executive Committee Member. She has served on and chaired a number of statewide committees including Education, Professional Standards, RPAC Funding, Finance, and By-laws & Policy. She was honored by the Metropolitan Kansas City Board as 1994 Sales Manager of the Year.

Licensees Welcome at Commission Hearings

The Commission has decided to withdraw the proposed fingerprinting regulation. It will, however, hold the planned public hearings in conjunction with the April 3, May 15, and June 28 regular meetings. The Commission hopes that all interested individuals will testify at the hearings to offer suggestions on how to handle undisclosed felony convictions of licensees and applicants. Written comments are also welcome and should be addressed to the Commission in care of Janet Carder, Executive director, PO Box 1339, Jefferson City, MO (fax 573-751-2777).

Licensees and members of the public are invited to attend the open session of any meeting. Dates and places are listed below, but specific sites are not final. Anyone planning to attend should call the Commission office (573-751-2628) a few weeks before the meeting to learn the exact meeting location.

April 3-Jefferson City
 May 15-Kansas City
 June 28-St. Louis
 August 7-Springfield
 October 2-Lake Ozark
 November 20-Kansas City

Personal Assistants-- Licensed and Unlicensed

The Missouri Real Estate Commission receives many inquiries asking what a personal assistant may and may not do. The use of personal assistants and other clerical personnel in the real estate industry is a growing trend and will likely continue to grow. Question from licensees usually fit into one of two categories: (1) What specific functions can be assigned to a secretary or other unlicensed assistant, and (2) What are the responsibilities of the supervising broker?

A secretary or unlicensed assistant **can**:

- Answer the phone and forward calls to a licensee;
- Submit listings and changes to a multiple listing service;
- Follow up on loan commitments after a contract has been negotiated;
- Assemble documents for closings;
- Secure documents (public information) from the courthouse, sewer district, water district, etc.;
- Have keys made for company listings;
- Write ads, flyers, and promotional materials for approval by licensee and supervising broker and place advertising;
- Record and deposit earnest money, security deposits, and advance rents;
- Type contract forms for approval by licensee and supervising broker;
- Monitor licenses and personnel files;
- Compute commission checks;

- Place signs on listed property;
- Order items of routine repair as directed by licensee;
- Act as a courier to deliver documents, pick up keys, etc.;
- Place routine telephone calls on late rent payments;
- Schedule appointments for licensee to show listed property.

A secretary or unlicensed assistant **can not**:

- Be licensed with one firm and do any real estate activities that require a license while working as an assistant in another firm. A licensee who is moonlighting as an assistant in a second real estate company may do only the activities listed above when working for the second company.
- Host open houses, kiosks, home show booths or fairs, or hand out materials.
- Prepare promotional materials or ads without the review and approval of a licensee and the supervising broker;
- Show property;
- Answer any questions on listings, title, financing, closing, for anyone outside the firm;
- Discuss or explain a contract, listing, lease, agreement, or other real estate document with anyone outside the firm;
- Be paid on the basis of real estate activity, such as a percentage of commission, or an amount based on volume of listings, sales, etc.;
- Negotiate or agree to a commission, commission split, management fee or referral fee on behalf of a licensee.

It is important, when employing any clerical assistant, to review the regulations governing broker supervision (4 CSR 250-8.020). The commission will look at the following questions when reviewing a situation:

- 1) Was the broker physically available to supervise?
- 2) Had the broker contracted to avoid the responsibilities of supervision?
- 3) What type of activity was the licensed or unlicensed assistant engaged in?
- 4) Had the broker established written policies and procedures to guide both licensed and unlicensed personnel associated with the firm?
- 5) Did the broker try to prevent violation of the statute or regulations?
- 6) Did the broker try to avoid learning about a violation?

Consent to Examine Form (MO 419-0809, 5-95)

A copy of the revised Consent to Examine and Audit Escrow or Trust Account Form was included in the August, 1995 Newsletter. The Commission no longer accepts older consent forms. Please be sure that you have destroyed any forms other than those showing MO 419-0809, 5-95 in the lower left-hand margin.

When filing a consent form to open or close an account, you must include a blank deposit ticket marked VOID across the face.

Contact the Commission office if you need additional consent forms, or if you have questions about how to complete the form.

Missouri Real Estate Commission
3605 Missouri Boulevard
P.O. Box 1339
Jefferson City, MO 65102
(573) 751-2628
Fax (573) 751-2777

Me! Carnahan, Governor
Michael J. Wolken, Chairman
Gregory J. Nooney, Jr., Vice Chairman
James W. Hutcheson
Mary E. Kinstler
Craig F. Lowther
Barbara R. Stuckey
Mary L. Vernassie

Janet Carder
Executive Director

Bulk Rate
U.S. POSTAGE
PAID
Permit 33
Jefferson City, MO 65101

It's License Renewal Time

Yes, renewal time is here again! To insure you receive your renewal application, please be sure to notify the Commission immediately if you have changed your home or office address.

All corporation, partnership, association, broker-Officer, broker-partner, broker-associate, broker-salesperson, inactive broker and professional corporation broker-salesperson licenses will expire on June 30, 1996. The Commission expects to mail all broker-type renewal applications in mid to late April. If you have not received your application by mid-May, please call the Commission.

All salesperson, inactive salesperson, and professional corporation salesperson licenses will expire on September 30, 1996. Salesperson renewal applications will be mailed in early July. And salesperson licensees should call the Commission if they have not received their application by the end of July.

Complete your continuing education hours now. The sooner you register, the more likely you will be to get your choice of subjects, dates, and convenient location. When it gets close to June 30 and September 30, classes fill up fast. Remember, if your 3-hour Core class and 9 hours of elective credit are not completed by the date your license expires, you are required to attend the entire prelicense course again. That means a 60-hour course for salespersons and a 48-hour course for brokers.

A note on continuing education: Course providers send rosters to the Commission as soon as a class is completed. The Commission inputs licensees records from those rosters, and reports hours credited to each licensee on the licensee's Newsletter label. Licensees should not send course completion certificates to the Commission unless the renewal application requests them. Certificates are requested if, by chance, a roster is lost in the mail, if hours were not credited due to some simple human error, or if the licensee took the course after the renewal notice was printed. All course providers can provide duplicate certificates, so there's no need to panic even if you have lost yours and the renewal application requires them.

At the time of renewal, an individual whose license is current may change status, transfer, or go inactive and pay only the renewal fee. The individual choosing one of these options should discard the envelope enclosed with the renewal application. He or she should send the (1) renewal application, (2) renewal fee, and (3) change form, together, to the Missouri Real Estate Commission, P.O.Box 1339, Jefferson City, MO 65102.

Here is a checklist of things to do to ensure that your license renewal will go smoothly:

1. Read instructions thoroughly.
2. Make any corrections in telephone number (including area code) or address in the space

provided on the renewal application. Contact the Commission office to learn the correct renewal fee if your residence address changes to another state.

3. Submit the renewal after all continuing education hours are completed.
4. Attach only continuing education certificates for hours that are requested by the renewal application.
5. Answer the two questions on the application.
6. Sign and date the application.
7. If renewing and requesting credit for continuing education hours taken with a sponsor not preapproved in Missouri, call the Commission for an individual request form. Submit the renewal application, the individual request form (with attachments) and two separate checks---one check for the renewal fee and another \$10 check for the individual request fee.

Mail your renewal early. Broker renewal applications received after June 30th and salesperson renewal applications received after September 30 will be assessed a late fee of \$50 per month or partial month, not to exceed a total late fee of \$200.