

## **AUDIT GUIDELINES**

### **RECORDS MREC AUDITORS WILL ASK TO SEE**

While the **broker must maintain legible copies of all records for a minimum of three years**, the list below gives some of the records that the auditor will typically review.

1. All sales and property management escrow accounts bank and related accounting records.
2. Sales & Leasing Files – Pending and Closed: All documents may not apply to each file examined. The documents examined will depend on whether the broker being audited represents the listing side, selling side, or both.
  - A. Listing and/or buyer/tenant agency agreement
  - B. Transaction brokerage agreement
  - C. Authorization to Show agreement
  - D. Sales or lease contracts, along with any counter-offers, addendum's, special agreements, or attachments
  - E. Brokerage relationship disclosure
  - F. Copy of earnest money check or receipt (pending)
  - G. Buyer and Seller closing statements
  - H. Checks or other proof of payment to licensees for commissions paid on closed transactions
  - I. All other documents and correspondence related to the transaction
3. Property Management Files
  - A. Property management agreements
  - B. Leases (If executed) to include agency relationship disclosures
  - C. Owner's statements or ledgers
  - D. Tenant's statements or ledgers
  - E. Property list and/or rent roll
  - F. Security deposit ledgers
  - G. Paid Invoices and or receipts paid for property expenses
  - H. Accounting detail/backup for management fees taken
  - I. Copies of receipts issued to tenants for payments in cash
  - J. See also, "Escrow/Trust Account Reconciliation" in section 4, below for bank accounting records needed

If you have specific audit preparation or record retention questions, please contact the auditor identified in the audit notification letter you received. He or she will be happy to address your questions.

The outline below shows the basic guidelines used by MREC auditors when conducting random or routine audits. The auditors are not required to follow the outline precisely, and may examine more or less than the areas listed. The Commission provides this outline to serve as a guide to licensees as they conduct their business. The Commission does not guarantee that this outline includes each and every statute and regulation that may affect a licensee or the outcome of an audit.

#### 1. Audit Notification/Scheduling the Audit

- A. The licensee will generally be notified by mail that they have been selected for an audit. The letter of notification may include a Real Estate Questionnaire concerning the level of the broker's activity. The Questionnaire must be returned by the licensee within 30 days.
- B. An auditor will contact the licensee by telephone to schedule the examination. The auditor will do his/her best to schedule the audit at a mutually agreeable date/time, but may not be able to accommodate all scheduling conflicts. If the broker has specific scheduling conflicts, of a week or longer, within 90 days of the date on the audit notification letter (i.e. vacation plans, out-of-town conferences, surgeries, etc.), the broker should call or e-mail the auditor as soon as possible to advise of his/her unavailability.

#### 2. Audit Process

- A. Business activities and administrative procedures
  - 1) Observe business sign and business hours (2250-8.010)
  - 2) Examine licenses of brokerage, broker and affiliated licensees (2250-8.060)
  - 3) Check for use and registration of fictitious name(s) (2250-4.030)
  - 4) If brokerage is an entity, is the entity in good standing with the Missouri Secretary of State? (339.020, 339.100 and 2250-4.070)
  - 5) Verify business address and telephone number are current with MREC records (2250-4.040)
  - 6) Determine the designated broker
  - 7) Determine the designated broker, sales manager or other supervising brokers (2250-4.070) (2250-8.040)
  - 8) Determine if there are any branch offices (2250-8.030)
    - a) Who is the branch manager and how is the manager licensed? (2250-8.030)
    - b) What business name is used? Proper signage? (2250-8.010 and 2250-8.030)
  - 9) Determine if there are any controlled and/or directed business arrangements? (2250-8.110)
  - 10) Are all forms approved by legal counsel?

- 11) The auditor may also ask for updated brokerage statistics; Number of:
- a) sales escrow accounts maintained;
  - b) pending contracts;
  - c) closed transactions in the past twelve months;
  - d) leases negotiated (not managed);
  - e) down disputed contracts;
  - f) current listing agreements;
  - g) current buyer's agency agreements;
  - h) current transaction brokerage agreements;
  - i) management agreements;
  - j) owners and properties;
  - k) leases;
  - l) units managed; and
  - m) property management rental and security deposit escrow accounts.

The auditor may ask for internal or MLS reports of pending or closed transactions, as well as current listing agreements.

### 3. Brokerage Relationships

- A. If the brokerage has affiliated licensees, does the brokerage maintain a written policy statement regarding brokerage service relationships? (339.760)
  - 1) What types of brokerage service relationships are offered?
    - a) Are relationships identified and described?
  - 2) Is designated agency offered?
    - a) What policy or procedure is in place to ensure confidentiality?
- B. Examine Broker Disclosure Form (2250-8.097)
  - 1) Is the form preprinted?
  - 2) Do the choices marked on the preprinted form mirror the written policy statement regarding brokerage service relationships?
  - 3) Has the form been modified? Is the form current?
- C. Authorization for affiliated licensees to enter into brokerage service agreements on behalf of the broker (339.780)
  - 1) Has the designated broker provided written authorization for affiliated licensees to enter into these agreements on behalf of the brokerage?
  - 2) If not, has the broker signed all brokerage service agreements?
- D. Subagency (339.780)
  - 1) Is the brokerage a member of a multiple listing service?
  - 2) Are subagency agreements maintained with cooperating brokers?

4. Escrow/Trust Account Reconciliation: The auditor will generally examine bank records for all accounts which hold funds belonging to others, for the twelve months preceding the audit date. However, the auditor may request up to three years of records, if deemed necessary. The broker is required to maintain all records necessary to determine the adequacy of the account at any time. The specific records necessary to determine an account's adequacy can vary greatly between bookkeeping systems, brokers and types of accounts. The following is what is typical, but may not apply in all situations:
- A. Complete bank statements for the last 12 months. The auditor may also request a "cut-off statement" from your bank showing activity from the date of the last statement to the start of the audit.
  - B. Canceled checks (or imaged checks) and deposit tickets. If the bank does not return canceled/imaged checks or deposit tickets, the auditor will ask for duplicate checks/deposit tickets, check stubs or imaged copies of checks and deposits from the bank.
  - C. Check register, check stubs, deposit ledger, or other records of receipts and disbursements.
  - D. The last 12 months of bank reconciliations for all escrow accounts. The accounts are examined for compliance with 339.100, 339.105, 339.730, 339.790, 2250-8.120, 2250-8.160 and 2250-8.220.
  - E. The escrow accounts are reconciled as of the examination date and compared to all liabilities. The accounts are examined for compliance with 339.105, 2250-8.120, and 2250-8.160.
  - E. All voided checks are examined. (2250-8.160)
  - F. All pending contracts, owner financial statements and security deposit records are examined to determine liabilities to the escrow account(s).
  - G. On property management escrow accounts, the auditor will select a sample of checks paid from the account and examine the corresponding invoices or receipts to verify actual expenses.
5. Pending Contract Examination
- A. The auditor will examine all pending contracts. The corresponding brokerage service agreement(s), contract(s), addendum(s), and relationship disclosure, will also be examined.
  - B. Pending contract files are examined for compliance with 339.100, 339.105, 339.710-.860, 2250-4.030, 2250-8.096, 2250-8.100, 2250-8.110, 2250-8.120, 2250-8.130, 2250-8.140, and 2250-8.160.
  - C. Pending contracts are used to determine liabilities to the sales escrow account. All funds maintained and disbursed for pending contracts are verified by escrow account records. Broker must provide a copy of the buyer's earnest money check or a receipt from the title company or escrow handler for all pending transactions with earnest money.

6. Fallen-Through Transactions/Other Items

- A. The auditor will examine all other liabilities to the sales escrow account including fallen-through contracts, disputed contracts, loan servicing, and closed transactions with funds in escrow. These items are examined for compliance with 339.100, 339.105, and 339.710-.860, 2250-4.030, 2250-8.096, 2250-8.100, 2250-8.110, 2250-8.120, 2250-8.130, 2250-8.140, and 2250-8.160.

7. Closed Transactions

- A. The auditor will randomly select closed transactions from the examination period. The corresponding brokerage service agreement(s), contract(s), addendum(s), relationship disclosure, and closing statements will also be examined.
- B. These closed files are examined for compliance with 339.100, 339.105, 339.150 and 339.710-.860, 2250-4.030, 2250-8.090, 2250-8.096, 2250-8.100, 2250-8.110, 2250-8.120, 2250-8.130, 2250-8.140, 2250-8.150, and 2250-8.160.
- C. All funds deposited and/or disbursed for closed transactions are verified to escrow account records.
- D. The auditor will examine commission payments to agents for compliance with 339.100.2 and 339.150.

8. Brokerage service agreements with sellers/lessors (excluding management agreements)

- A. The auditor will examine current advertising conducted by the brokerage, including the broker's and all licensee websites. The auditor may select brokerage service agreements from current print and Internet advertising. The auditor will also examine advertising for compliance with 339.100.2 (13), 339.10.2 (14), 339.100.2 (24) and 2250-8.070.
- B. The auditor will select and review listing or transaction brokerage agreements from all the brokerage service agreements with sellers maintained by the brokerage.
- C. Listing files are examined for compliance with 339.710-.860, 2250-4.030, 2250-8.020, 2250-8.070, 2250-8.090, 2250-8.110 and 2250-8.140.

9. Brokerage service agreements with buyers/tenants

- A. The auditor will randomly select buyer's agency and transaction brokerage agreements.
- B. These agreements will be examined for compliance with 339.710-.860, 2250-8.020, 2250-8.090, and 2250-4.030.

10. Management Agreements

- A. The auditor will examine all current property management agreements. If the brokerage has management agreements that are expired or canceled but were current during the examination period, these agreements may also be examined.

- B. Management agreements are examined for compliance with 339.710-.860, 2250-8.090, 2250-8.120, 2250-8.140, 2250-8.160, and 2250-8.200.
- C. The auditor will examine property management records to determine liabilities for funds maintained on behalf of property owners. These funds could include property owner's repair funds, owner's reserve funds, rents collected, prepaid rents, and or security deposits. These liabilities will be compared to reconciled balances in the property management and/or security deposit escrow account(s).

#### 11. Leases

- A. The auditor will examine a sample of leases and compare the security deposit liability per the lease to the liability per the brokerage records. If the brokerage does not maintain security deposit liability records or, if the brokerage maintains inadequate records, all leases will be examined to obtain security deposit liabilities.
- B. Written brokerage relationship disclosures will be examined on all leases for compliance with 2250-8.096.
- C. Leases negotiated on unmanaged properties may be examined, with corresponding brokerage service agreements, for compliance with 339.710-.860, 2250-4.030, 2250-8.096 and 2250-8.160.

### FREQUENTLY ASKED QUESTIONS

#### 1. **Q. How long will the audit take?**

Answer: As there are so many variables that determine the length of an audit, you are encouraged to contact the auditor directly. He or she is the best qualified person to estimate the approximate length of the audit. However, they will not do so until after receiving and reviewing your completed Real Estate Questionnaire.

#### 2. **Q. What can I do if I feel that I am being treated unfairly by the auditor?**

Answer: Please call the MREC Audit Department at (573) 751-2628 (option 5) and ask to speak with an audit supervisor.

#### 3. **Q. What happens once the examiner leaves the broker's office?**

Answer: The examiner will prepare a detailed written report of the audit findings and submit both the audit workpapers and the report to the audit supervisor. Once the supervisor determines that no further documentation or clarification is needed, the report is finalized and placed on the Commission's next meeting agenda. The agenda is sent to the Commissioners 2 - 3 weeks before the meeting. Each audit on the agenda is reviewed at the meeting and the Commission votes on the appropriate action to be taken. Action can range from a letter advising that no violations were noted to a referral to the Attorney General's Office for revocation of license.

**4. Q. How long before the broker hears from the Commission concerning the audit results?**

Answer: It varies. Depending on when the audit is completed, whether the audit supervisor requests additional documentation from the auditor, and when the agenda must be prepared and mailed, typically 4 - 6 months will pass before the broker hears from the Commission. Larger and/or complex audits may take longer than six months. If you have questions regarding the status of an audit conducted on your brokerage/license, you may contact the MREC Audit Department at (573) 751-2628 (option 5) and ask to speak with an audit supervisor.

**5. Q. How will I know if the problems noted by the examiner are major or minor as compared to other audits?**

Answer: The auditor does not make this determination and will not compare your audit with other audits conducted. The auditor is merely a fact finder for the Commission. It is the Commission's responsibility to determine whether the items noted in the examination report are significant and warrant pursuit of formal discipline.

**6. Q. How should the broker handle an overage or shortage in the escrow account(s)?**

Answer: The broker should identify the source of the overage or shortage and immediately take corrective action. The broker should clearly document such corrections and be prepared to provide proof of account correction(s) upon request of the Commission.

**7. Q. Should the broker immediately start correcting other problems found in the audit?**

Answer: It depends. While the auditor typically goes over the noted violations at the end of the fieldwork, because the audit is not considered complete until reviewed by the Commission, the final report may differ slightly from the exit interview between the auditor and broker. Therefore, the broker must decide if the issues discussed warrant immediate action and if new procedures should be implemented to ensure future compliance.

While the auditor may be able to give suggestions for future compliance, the auditor will not give specific instruction or demand that actions be taken. This is not within the scope of the auditor's duties or powers.

Licensees are encouraged to contact the auditor directly with audit questions specific to their office or situation. Any licensee may ask to speak with an Audit Supervisor by calling the Commission office at (573) 751-2628 (Select option 5).