



Review of agent activities, records, funds and reports

Chapter 3

After reading this chapter, you will be able to:

- properly document, track and supervise all activities which arise within a broker's office due to the existence of an employment;
- generate a complete client file to house all the information and documents related to a transaction;
- abide by the California Bureau of Real Estate's (CalBRE's) regulations concerning the three year retention of real estate documents;
- manage, receive, deposit, hold, oversee and disburse trust funds;
- implement an office-wide safety education program and enforce office safety standards;
- properly notify the CalBRE when a salesperson is terminated for violating real estate law.

client file
commingling
office manager

transaction coordinator
trust funds

Learning Objectives

Key Terms

Only a California Bureau of Real Estate (CalBRE)-licensed broker is authorized to advertise, contract for and provide services to real estate clients in expectation of compensation. Further, the broker is the only individual who may lawfully pay the sales agent for real estate related services. All types of compensation arising out of licensed services are first paid to the broker, and in turn the broker pays the sales agent as agreed in writing.¹ [See **RPI** Form 505, 506 and 507]

¹ Calif. Civil Code §2079.13(b)

Tracking transactions handled by a broker's agents

As an employee, a sales agent's real estate activities need to be supervised at all times by their **employing broker**. The broker is responsible for the consequences of all their agents' activities carried out *within the course and scope* of their employment with the broker. When a broker fails to properly supervise their sales agents, they face review from the CalBRE upon a complaint made by another licensee or member of the public.²

Duties to supervise sales agents include:

- establishing *office policies* and procedures;
- storing all *transaction documents* appropriately;
- handling *trust funds* received by the agent for deposit, retention or transmission;
- overseeing *advertisements*;
- ensuring compliance with *unlawful discrimination, fair housing and agency laws* [See Chapter 4];
- soliciting and negotiating client *listings and real estate transactions – sales, property management/leasing and mortgage activity*; and
- reviewing periodic *transaction reports* from agents for compliance with office policy.³

Tracking the transaction

At the core of broker supervision is the duty owed the CalBRE to be aware of the agent's activity on real estate transactions. To accomplish this, the broker needs to require their employed agents, whether sales agents or associate brokers, to report when:

- a listing is taken;
- an offer is accepted; and
- the sale closes escrow.

However, it's most prudent to have their agents report transaction activity by documentation at every step of the process. Documentation provides primary evidence of the agent's activities which helps the broker fulfill their duty to supervise. It also gives the broker a paper trail to refer to when something goes wrong (i.e. if an agent is negligent or a client pursues legal action against the broker and sales agent).

Documentation of activities undertaken

When a sales agent enters into a listing with a client for the services of their broker's staff, they need to prepare and submit a checklist type of form to the broker's *transaction coordinator*. On the form, they note all relevant information about activities undertaken in the employment. This includes information on:

- the type of listing;
- the client;
- how the listing was obtained;

² **Gipson v. Davis Realty Company** (1963) 215 CA2d 190; Calif. Business and Professions Code §10177(h)

³ California Bureau of Real Estate (CalBRE) Regulations §2725

LISTING INFORMATION REPORT For Broker's Administrative Use	
NOTE: This form is used by a seller's agent when setting up a file for a property listing as part of their employment with a broker, to summarize the terms and details of a property listing for their broker's supervisory review.	
DATE: _____, 20____, prepared and submitted by _____, office _____	
Instructions to Listing Agent: Check and enter information about the listing as appropriate.	
1. Listing status: 1.1 <input type="checkbox"/> New listing (Agent to fully complete this report) 1.2 <input type="checkbox"/> Modification of a listing (Agent to enter changes in appropriate blanks)	
2. The Listing Employment: 2.1 This employment is for an <input type="checkbox"/> exclusive right to sell, <input type="checkbox"/> _____ 2.2 This employment commenced on _____, 20____ and expires _____, 20____ 2.3 Award credits due Agent for this listing include _____ 2.4 The listing price is \$_____ 2.5 The property was previously listed with _____ under a listing expired on _____, 20____. a. Prior listing contained a safety clause which <input type="checkbox"/> expired, or expires _____, 20____.	
3. Brokerage Fees: 3.1 The brokerage fee to be paid by Seller is _____% of the sales price, or a flat fee of \$_____ 3.2 Listing Agent's name _____ office _____, _____% split. 3.3 Referring Broker/Agent name _____ office _____ _____ % split, or referral fee of \$_____, or _____%. 3.4 Name of Broker/Agent for registered Buyers _____ office _____ _____ % split, or referral fee of \$_____, or _____%. 3.5 Name of unlicensed individual entitled to a finder's fee _____ _____ % split, or referral fee of \$_____, or _____%. 3.6 Name of Seller's relocation Broker/company _____ Referral fee due our office _____	
4. Property Information: 4.1 Street address/legal _____ 4.2 City, State, ZIP _____ 4.3 Occupancy: <input type="checkbox"/> owner, <input type="checkbox"/> vacant, or <input type="checkbox"/> tenant 4.4 <input type="checkbox"/> New home, <input type="checkbox"/> resale, <input type="checkbox"/> previously bought or sold through office 4.5 Type of property: (check appropriate box) <input type="checkbox"/> single family detached <input type="checkbox"/> condo <input type="checkbox"/> condo high rise <input type="checkbox"/> town house/attached <input type="checkbox"/> mobilehome <input type="checkbox"/> vacant lot <input type="checkbox"/> two-to-four units <input type="checkbox"/> five-or-more units <input type="checkbox"/> acreage <input type="checkbox"/> commercial <input type="checkbox"/> office <input type="checkbox"/> industrial <input type="checkbox"/> farm with residence <input type="checkbox"/> farm with groves	
5. Source of Listing: (check appropriate boxes) 5.1 Publications and periodicals as source of lead: <input type="checkbox"/> newspaper advertisement by Broker, <input type="checkbox"/> classified, or <input type="checkbox"/> display. <input type="checkbox"/> curbside stand publication <input type="checkbox"/> local magazine display advertisement <input type="checkbox"/> _____ 5.2 Broker and Agent activities as source of lead: <input type="checkbox"/> walk-in/floor call <input type="checkbox"/> prior client <input type="checkbox"/> direct mail <input type="checkbox"/> open house <input type="checkbox"/> discount program <input type="checkbox"/> office seminar <input type="checkbox"/> yard sale <input type="checkbox"/> radio <input type="checkbox"/> TV <input type="checkbox"/> farming <input type="checkbox"/> FSBO conversion <input type="checkbox"/> expired listing <input type="checkbox"/> MLS (local) <input type="checkbox"/> online MLS <input type="checkbox"/> Broker website	
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- the property involved;
- the agreed-to brokerage fees; and
- office duties required to service the client. [See **RPI** Form 522 accompanying this chapter]

It is the broker's **transaction coordinator** or **office manager** who works with the listing agent to identify the steps to be taken to fulfill their **due diligence obligations** owed the client. This includes actions the coordinator can assist with, like ordering the for-sale sign and installing the key safe on a sales listing. [See Chapter 6; see **RPI** Form 521 and 521-1]

The broker reviews these completed forms, directly or through the office manager they have employed. [See Chapter 6]

**transaction
coordinator**

A licensee hired to assist an agent or broker to process documents, contracts and disclosures in a real estate file.

office manager

A licensee hired by a broker to fulfill the supervisory responsibility of reviewing documents and maintaining office files. [See **RPI** Form 510]

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Report

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5.3 Referrals as source of lead:

<input type="checkbox"/> acquaintance	<input type="checkbox"/> escrow officer	<input type="checkbox"/> lender representative
<input type="checkbox"/> Broker reputation	<input type="checkbox"/> prior client	<input type="checkbox"/> other Broker or Agent
<input type="checkbox"/> finder	<input type="checkbox"/> relocation department	

6. Client Information:

6.1 Name of Seller _____
Mailing address _____
Phone numbers: Cell _____, Work _____ ext. _____, Home _____
Seller's email address _____

6.2 Name of Seller _____
Mailing address _____
Phone numbers: Cell _____, Work _____ ext. _____, Home _____
Seller's email address _____

6.3 Seller's motivation to sell: (check appropriate boxes)

<input type="checkbox"/> retirement home	<input type="checkbox"/> REO	<input type="checkbox"/> medical
<input type="checkbox"/> debt reduction	<input type="checkbox"/> need larger home	<input type="checkbox"/> need smaller home
<input type="checkbox"/> divorce/death	<input type="checkbox"/> foreclosure	<input type="checkbox"/> build/develop
<input type="checkbox"/> marriage	<input type="checkbox"/> reinvest	<input type="checkbox"/> estate/probate
<input type="checkbox"/> relocate for job	<input type="checkbox"/> become a tenant	<input type="checkbox"/> leave area

6.4 Seller's relocation intentions: (check or enter information as appropriate)
Seller is relocating to (city/state) _____
☐ already owns relocation property
☐ remaining in local area
☐ relocation broker _____ referral fee _____%; to _____

7. Office activity due to listing:

7.1 ☐ Thank you letter to Seller
7.2 ☐ Listing/property information to marketing and advertising
7.3 ☐ Flyer preparation
7.4 ☐ Order For Sale signs
7.5 ☐ MLS profile sheet and Broker lead
7.6 ☐ Internet submissions
7.7 ☐ Lockbox. If no lockbox, key is _____
7.8 ☐ Notice to tenant that property is for sale with 24-hour telephonic notice to show [RPI Form 116]
7.9 ☐ Caravan: MSL caravan date _____ Office caravan date _____
7.10 ☐ Advertising submitted
7.11 ☐ Agent/Seller instructions for showing _____
7.12 ☐ _____

8. Addenda to the Listing Agreement:

8.1 ☐ Agency Law Disclosure – Real Estate Agency Relationships [RPI Form 305]
8.2 ☐ Federal Residency Declarations – Citizen Status [RPI Form 301]
8.3 ☐ California FTB Withholding Certificate [FTB Form 590]
8.4 ☐ Good Faith Estimate of Seller's Net Proceeds – On Sale of Property [RPI Form 310]
8.5 ☐ Work Authorization [RPI Form 108]
8.6 ☐ Listing Package Cost Sheet – Due Diligence Checklist [RPI Form 107]
8.7 ☐ Affiliated Business Arrangement Disclosure Statement – Residential Broker (Regulation X (RESPA); 24 CFR §3500.51) [RPI Form 519]
8.8 ☐ Conflict of Interest Disclosure – Kinship, Position or Undue Influence [RPI Form 527]
8.9 ☐ _____

9. Listing Package:

9.1 ☐ Property profile report from title company:
☐ agent to order, cost paid by ☐ Seller, or _____

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The review needs to be done regularly, once a week or at minimum once a month depending on the nature of the listing and the size of the broker's staff.

The broker also needs to decide how often the agent will update the status of the listings with the transaction coordinator on the listings they obtained. For smaller brokerages, the broker may want to meet with the sales agent themselves for regular updates, especially with sales agents new to the office, to make sure they're acting in compliance with the policies set and conduct expected by the broker.

The broker will find it helpful to have agents report all actions taken on behalf of a listed client in a single **file activity sheet** for that listing. Additionally, reports tracking each action on the listing assist the sales agent as a review of

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9.2 ☐ Natural Hazard Disclosure Statement [RPI Form 314]:
☐ agent to order [RPI Form 131], cost paid by ☐ Seller, or _____

9.3 ☐ Home (property) Inspection Report:
☐ agent to order [RPI Form 130], cost paid by ☐ Seller, or _____

9.4 ☐ Transfer Disclosure Statement (TDS) [RPI Form 304]

9.5 ☐ Structural Pest Control Report, ☐ corrective work and clearance:
☐ agent to order [RPI Form 132], cost paid by ☐ Seller, or _____

9.6 ☐ Lead-Based Paint Disclosure – On Sale of Real Estate [RPI Form 313] (for property built before 1978)

9.7 ☐ Residential Earthquake Hazards Report [RPI Form 315] (for property built before 1960)

9.8 ☐ Local Ordinance Occupancy and Retrofit Report, ☐ compliance:
☐ agent to order [RPI Form 133], cost paid by ☐ Seller, or _____

9.9 ☐ Homeowners' Association (HOA) Documents (CID-condos):
☐ agent to order [RPI Form 135], cost paid by ☐ Seller, or _____

9.10 ☐ Seller's Neighborhood Security Disclosure Statement [RPI Form 321]

9.11 ☐ Request for Notice of Mello-Roos Assessment:
☐ agent to order [RPI Form 137], cost paid by ☐ Seller, or _____

9.12 ☐ Occupant's Operating Expense Sheet – Ongoing Operating Costs [RPI Form 562]

9.13 ☐ Hazard Insurance Conditions (fair plan/prior claims) [RPI Form 261]

9.14 ☐ Annual Property Operating Data Sheet (APOD) [RPI Form 352]

9.15 ☐ Energy benchmarking compliance disclosure for commercial properties.
☐ agent to order, cost paid by ☐ Seller, or _____

9.16 ☐ RPI's Income Property Brokerage (IPB) Suite of Forms

9.17 ☐ _____

9.18 ☐ _____

9.19 ☐ _____

9.20 ☐ _____

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their time spent with each client. Keeping records induces efficiencies when scheduling activities and planning for future listings. [See Figure 1, excerpt from **RPI Form 520**]

Finally, when escrow is closed on a sales transaction a **property sold report** is prepared. This lists the property's sales price and the fees paid to the broker, listing agent and any referral fees. It also contains information on trust account funds, service providers and the buyer and seller for structuring future marketing. [See **RPI Form 523**]

**Property sold
report**

Or, if the property does not sell and the listing expires, the agent files an **expired listing report**. Here, the agent details the steps taken to sell the property, why the property did not sell and whether or not the brokerage should consider working with this client in the future. [See **RPI Form 522-1**]

Agents and broker associates aren't the only individuals who perform duties on behalf of the broker. It's common for a corporate broker to hire office managers, administrative assistants and *transaction coordinators*. [See Chapter 6]

**Supervision of
all employees**

To ensure everyone is doing their job, the broker needs to set procedures in place for documenting the transaction across all participants from start to finish.

Methods of tracking

Depending on how tech savvy the brokerage is, the preferred method of tracking varies. The bare bones tracking method is a spreadsheet with the listing details, dates and amounts paid. And while relying on spreadsheets and filing cabinets is a time-tested way to follow and record sales agent activities, more efficient — *digitized* — ways of tracking now exist to make everyone's lives easier.

For example, **customer relationship management (CRM)** software such as *Property Base* helps brokers manage their agents' listings by storing documents, tracking emails, tracking agent fees and even generating leads. It works with many other online platforms, like *DocuSign* and *MailChimp*, allowing brokers and agents to run their entire business from one platform.

Other programs, such as *Broker Mint*, track transactions, agent fees and offers. It's also integrated with *Quickbooks* to make office accounting easier.

Finally, if a broker wants to take their management activities from paper to the screen, they ought to ask their transaction coordinator what programs they recommend. The coordinator may be familiar with a software already. Or, they may have other ideas about making the tracking process run more smoothly.

The supervisory role of the agent's broker on listing property

The agent who obtained the listing becomes the individual in the broker's office who is initially responsible to the broker for the care and maintenance of the **client's file**.

On entering into a listing employment, the agent sets up a *physical client file* to house information and documentation on all activity which arises within the broker's office due to the existence of the employment.

For example, the file on a listing for the sale of a property is to contain:

- the **original listing agreement** [See **RPI** Form 102];
- the **Agency Law Disclosure** [See **RPI** Form 305];
- any **addenda** and other attachments needed as part of the listing agreement;
- **property disclosure documents** the seller and seller's agent provide to prospective buyers and their agents during the marketing of the property, such as the:
 - Transfer Disclosure Statement (TDS) [See **RPI** Form 304];
 - Natural Hazard Disclosure Statement (NHD) [See **RPI** Form 314];
 - home inspection report [See **RPI** Form 130];
 - pest control report [See **RPI** Form 132]; and
 - local ordinance compliance disclosure [See **RPI** Form 307];
- an **activity sheet** for the entry of information on all activities generated by the employment and marketing effort [See Figure 1, excerpt from **RPI** Form 520]; and
- a **listing information report**. [See Form 522]

client file

A physical file established at the beginning of a listing to house information and document all the activity which arises within the broker's office due to the existence of the employment.

Figure 2

Excerpt from
Form 521Transaction
Coordination
Sheet (Seller's
Agent)

Reports/Docs Needed		Prepare, Sign, Return		Check Items Needed	Itemized Listing, Marketing, and Closing Activities:
Ordered or Requested Date	Received Date	Sent to Date	Returned Date		LISTING TAKEN:
					Seller's Listing Agreement – Exclusive Right to Sell, Exchange or Option [RPI Form 102]
					Agency Law Disclosure – Real Estate Agency Relationships [RPI Form 305]
					Listing Package Cost Sheet [RPI Form 107]
					Listing information to marketing/advertising
					Photo taken, picked up, distributed
					Weekly ads mailed

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- the client's information [See Form 522 §6];
- all office activity which arises within the broker's office due to the existence of the listing [See Form 522 §7];
- any addenda to the listing agreement [See Form 522 §8]; and
- all information provided in the listing package. [See Form 522 §9]

Additional forms and documents used to build a file's content may vary depending on the type of property and transaction involved. These forms and documents typically include:

- checklists prepared by a broker or their listing coordinator;
- a transaction coordinator's (TC's) closing checklist [See Figure 2, excerpt from **RPI** Form 521];
- escrow worksheets [See RPI Form 403];
- work authorization forms [See **RPI** Form 118 and 130-134];
- advance fee and advance cost checklists; or
- income property analysis forms. [See **RPI's** Income Property Brokerage (IPB) Suite of Forms]

The broker's file

The client file belongs to the *broker*, not the seller's agent. However, it will likely remain with the listing agent the sale is closed or the listing expires un-renewed. The agent hands the broker the entire file on the close of escrow. Delivery of the file with the agent's final closing report is usually a **condition precedent** to payment of the agent's share of the fee received by the broker.

The broker or office manager periodically reviews the file as a supervisory requirement. Initially on taking a listing and on employment modifications, the filled-out Listing Information Report, along with other pertinent forms and documentation, is thoroughly reviewed by the broker. When the file is closed out by the agent, the report provides the broker or manager with all the information necessary to distribute fee splits and referral fees.

Checklists belong in the file and are used by the agent. They are reviewed periodically by the agent, office manager, TC or employing broker for oversight and to determine future tasks needed to better service the listing and earn a fee.

Following are some — but certainly not all — steps a broker and their agent may undertake to fulfill their employment responsibilities owed to the client.

They include:

- A **property profile** of the seller's title from a title company in order to identify all owners needed to list, sell and convey the property.
- A TDS filled out and signed by the seller. [See **RPI** Form 304]
- A *home inspection report* prepared by a home inspector. [See **RPI** Form 130]
- A **natural hazard disclosure (NHD)** on the property from a local agency or a vendor of NHD reports. [See **RPI** Form 314]
- An **Annual Property Operating Data sheet (APOD)** covering the expenses of ownership and any income produced by the property. [See **RPI** Forms 352 and 562]
- Copies of all the Covenants, Conditions and Restrictions (CC&Rs), disclosures and assessment data from any *homeowners' association* involved with the property. [See **RPI** Form 150 §11.9]
- A *termite report* and clearance paid for by the seller. [See **RPI** Form 150 §11.1(a)]
- A statement on the amount and payment schedule for any special district property improvement bonds which are liens on the property.
- A **visual inspection** of the property and a survey of the surrounding neighborhood by the seller's agent to become informed about readily available facts affecting the marketability of the property.
- *Advising* the seller about the marketability of the listed property based on differing prices and terms for payment of the price, and the financial and tax consequences of various sales arrangements which are available.
- A *marketing package* on the property compiled by the seller's agent and handed to prospective buyers or buyer's agents before the seller accepts any offer to purchase the property. This consists of copies of all the property disclosures required to be handed to prospective buyers.
- A *marketing plan* prepared by the seller's agent and reviewed with the seller for locating prospective buyers, such as distributing flyers, disseminating property data in multiple listing services (MLSs), posting "For Sale" signs on the premises and hosting open house events.
- A **seller's net sheet** prepared by the seller's agent and reviewed with the seller each time pricing of the property is an issue. [See **RPI** Form 310]
- Informing the client of the listing agent's sales activities by weekly due diligence communications advising what specifically has been done during the past several days and what the seller's agent expects to do in the following days.
- Keeping records in a client file of all communications, activities and documents generated due to the listing. [See **RPI** Form 525]

Guidelines and checklists

Duty to CalBRE to keep records

All records of an *agent's activities* on behalf of a client during the listing period are retained by the agent's broker for **three years**.⁴

The *three-year period* for retaining the buyer's or seller's activity file for CalBRE review begins to run on the closing date of a sale or from the date of the listing if a sale does not occur. Upon notice, the records will be made available for inspection by the Commissioner of Real Estate or their representative, or for an audit the Commissioner may order.⁵

How can brokers avoid storage costs related to bulky transaction files and other real estate documents? Nix the paper and file them digitally.

The CalBRE requires brokers to retain real estate documents for three years if the documents were:

- used in a transaction requiring a real estate broker's license; and
- executed or obtained by the broker or broker's agent.

Upon notice by the CalBRE, these records need to be made available for examination, inspection, and copying by a CalBRE representative.

As an alternative to paper, brokers may use **electronic image storage media** to retain and store copies of all documents executed by the broker and their agents in connection with any transaction performed under the broker's license.

Electronic image storage media

Copies of real estate documents (i.e. listings, purchase agreements, deposit receipts, canceled checks, trust fund records, etc.) may be stored on an *electronic image storage media* if the following requirements are met:

- the electronic storage is non-erasable and does not allow changes to the stored document or record;
- the stored document is made or preserved as part of the regular course of business;
- the original record was prepared by the broker or the broker's employees at or near the time of the event reflected in the record;
- the custodian of the record is able to identify the stored record, the mode of its preparation, and the mode of storing it;
- the electronic storage contains a reliable indexing system that provides ready access to a desired document or record, appropriate quality control of the storage process, and date-ordered arrangement of stored documents; and
- records copied and stored are retained for three years.⁶

Brokers also need to maintain a means of viewing these stored documents at their office, and provide a paper copy of any document or record requested by the CalBRE.⁷

⁴ Business and Professions Code §10148

⁵ Bus & P C §10148

⁶ CalBRE Regs. §2729(a)

⁷ CalBRE Regs. §2729(b)

The first step in converting to digital storage is to digitize files and record keeping. To avoid scanning closed files and converting them from paper to digital formats, maintain files in digital format from the beginning. Otherwise, brokers can convert paper documents into *digital format* as the transaction progresses, creating a digital file as they go.

Planning for digital storage

As part of planning for electronic storage of records, brokers first need to determine where and how their records will be stored. The three most common options are:

- online;
- networked; and
- removable media.

It is good practice to select appropriate media and systems for maintaining records for the required period of time. Thus, files may need to be refreshed, transferred to new media, or migrated to a different format.

To get started, all paper files need to be converted to digital format. This is best accomplished by either:

- scanning documents; or
- adapting a paperless system of forms and using electronic signatures.

Online storage allows immediate access to stored files on the internet. Properly secured online storage provides access to **authorized users only**.

A popular method of online storage is known as cloud storage. Files “on the cloud” are stored by a third-party and accessed through their web service.

However, as with any outside provider, it is important to do some research regarding possible accessibility issues and the security of confidential files. It is best to ask questions about cloud provider policies and procedures for storing, preserving and providing access to files and records.

In addition, be cautious, as cloud networks can go down causing delays in accessing files. Also, most cloud storage requires payment of monthly or annual fees.

Another method of electronic storage includes **offline media**, such as *storage area networks (SANs)*. SANs allow access to remote drives with the same convenience of internal hard drives. These files can also be easily accessed by any authorized user within the network.

Offline storage

Removable media are files that cannot be accessed immediately. These files are stored offline. This type of media includes:

- external hard drives;
- DVD+/-R;
- SD cards; and
- flash drives.

However, using removable media can be risky. This method requires safe keeping so data does not become corrupt by any external influence, such as excessive heat or demagnetizing.

Even when properly cared for, all digital and electronic storage media and hardware have limited life expectancy. Hardware and software may also be replaced by rapid advances in technology. Therefore, careful planning is imperative depending on the length of time a file is to be stored.

Maintain backup copies of all stored materials preferably in an off-site, geographically different location that does not share the same disaster threat.

Create policies and procedures for backing up files. Develop procedures for labeling storage media. Each external label is to contain information unique to what is stored.

Trust fund(amentals)

trust funds

Items which have or evidence monetary value held by a broker for a client or others when acting in a real estate transaction.

Funds belonging to others which a broker and their agents handle when acting as agents in a transaction are known as **trust funds**.

Trust funds include:

- rents and security deposits collected under a property management agreement [See **RPI** Form 590];
- good faith deposits tendered by a buyer or tenant with an offer to purchase or lease;
- fees and costs handed to the broker in advance of their performance of agreed-to services;
- mortgage payments and funds on contract collection and mortgage brokerage; and
- any other personal property of value.

Trusts funds are held by brokers for safekeeping and may not be treated casually. **Recordkeeping** and accounting requirements are imposed on brokers when they receive, transfer or disburse trust funds.

Handling cash and checks

Funds received in the form of cash or checks made payable to the broker while acting as an agent need to be:

- deposited into the broker's trust account;
- held undeposited as instructed; or
- endorsed and handed to others entitled to the funds.

Trust funds received in the form of checks or cash may only be used for expenditures authorized and incurred for the benefit of the owner of the funds.

Further, the broker needs to regularly account to the owner on the status, expenditure and location of the negotiable trust funds, called an **owner's statement**.

Prior to the end of the *third business* day following the day the broker receives negotiable trust funds, the broker needs to deposit the funds:

- with the *person or escrow* depository entitled to the funds (as payee or by endorsement); or
- in a *trust account* maintained by the broker at a bank or other state-recognized depository.⁸

Also, when an agent of the broker accepts trust funds on behalf of the broker, the agent needs to immediately deliver the funds to the broker, unless directed by the broker to:

- deliver the trust funds to the person or the escrow entitled to the funds; or
- deposit the trust funds into the broker's trust account.⁹

Also, if trust funds are to be placed in an interest-bearing account, the broker is to disclose:

- how interest is calculated on the account;
- who will receive the interest;
- who will pay bank service charges; and
- any penalties or notice requirements for withdrawal.¹⁰ [See **RPI** Form 535]

Once trust funds are deposited, they may only be withdrawn or disbursed as authorized and instructed by the owner of the funds. A third party who has an interest in the funds, such as a seller who acquires an interest in the buyer's good faith deposit on acceptance of a purchase agreement offer, may also be necessary to authorize disbursement.¹¹

The withdrawal of trust funds

Withdrawals or disbursements from the trust account in the name of an **individual broker** will be made under the signature of:

- the broker named as *trustee* on the account;
- a licensed broker or sales agent employed by the named broker under a broker-agent employment agreement [See **RPI** Form 505 and 506]; or
- an unlicensed employee of the named broker, provided the unlicensed employee is **bonded** for the total amount of the trust funds the employee can access.¹² [See Chapter 2]

A **signer** is an employee other than the broker-employer who has written authorization from the broker to withdraw or disburse funds from the trust account. This authority is either included in an addendum to the employment agreement or is provided in the agreement itself.

⁸ Bus & P C §10145; CalBRE Regs. §2832(a)

⁹ Bus & P C §10145(c)

¹⁰ Bus & P C §10145(d)(4)

¹¹ Bus & P C §10145(a)(1)

¹² CalBRE Regs. §2834(a)

When the trust account is in the name of a **corporate broker** as trustee, withdrawals are made by:

- the **designated officer (DO)** who qualified the corporation as a licensed broker [See Chapter 6]; or
- a licensed or unlicensed employee with the written authorization of the designated officer.¹³

The authorization from the corporation is made as part of the employment agreement with each signatory. [See **RPI** Form 505, 510 or 511]

However, a broker's written delegation to others who are signers on the trust account does not relieve the individual broker or the DO of a corporate broker from liability for any loss or misuse of trust funds.¹⁴ [See Chapter 6]

commingling

The mixing of personal funds with client or other third-party funds required to be held in trust.

If a broker deposits trust funds into an account used to receive and disburse personal or business funds, the broker has **improperly commingled** the funds. Similarly, *improper commingling* occurs when the broker places or leaves personal funds in a trust account.¹⁵

Except to the limited extent authorized by the *CalBRE*, commingling is always improper.

Commingling of trust funds is grounds for suspension or revocation of the broker's license.¹⁶

Safety first: taking precautions as a real estate agent

Real estate agents regularly encounter new people and places they are not familiar with – it is the nature of the business. To minimize risk, prudent brokers establish office policies which encourage their agents to:

- **Limit initial contact with a client.** Only agree to meet for the first time at the client's office or a listed home where the current occupant is present. This ensures their first point of contact is in a safe environment where they are not alone with a prospective client.
- **Screen prospective clients.** Have them fill out a client profile that collects contact details, and attach a copy of their driver license or identification card. This gives agents sufficient information to identify their client and is likely to discourage those with ill intentions.
- **Use the buddy system.** Have someone accompany the agent to open houses and home showings to reduce the chances of interacting with threatening people or situations. Pairing up does not necessarily call for the agent to partner with another agent – a friend, assistant, lender or spouse can be brought.

At the very least, make sure at least one person knows where you're going, and approximately when you'll be back. [See **RPI** Form 502]

¹³ CalBRE Regs. §2834(b)

¹⁴ CalBRE Regs. §2834(c)

¹⁵ *Stillman Pond, Inc. v. Watson* (1953) 115 CA2d 440

¹⁶ Bus & P C §10176(e)

Certain types of **restricted licenses** are issued by the CalBRE when a license has been:

- suspended;
- revoked; or
- denied after a hearing. [Calif. Bus & PC §10177(k)]

In effect, restricted licenses are probationary licenses subject to specific restrictions.

The CalBRE Commissioner may restrict licenses by:

- employment under a particular broker if the restricted licensee is a salesperson;
- duration (such as one month, three months, etc.);
- limitation to a certain area or type of activity;
- requiring the licensee or their employing broker to supply detailed reports of each transaction;
- requiring the restricted licensee to file a surety bond in an amount specified by the CalBRE; or
- other conditions or combinations of conditions.

Sidebar

**Broker
supervision
over restricted
licensees**

Editor's note — Any participation by an unlicensed individual is limited as they are not permitted to offer advice or information to the agent's clients. [See Chapter 2]

- **Don't lead, follow behind.** When showing a home, let the prospective buyer walk ahead to maintain visual control of your surroundings. This is both a safety precaution to protect agents, as well as a reliable method for theft prevention. Bonus: letting clients walk ahead allows them to view a home at their own pace.
- **Always carry your phone and keys.** Having a phone accessible at all times allows agents to quickly and easily contact someone in an emergency. Prudent agents will also want to keep hold of their car keys in case they need to quickly exit an out-of-control situation.

In the event an agent feels uneasy around a client or other person they encounter, they are advised to:

- call their office, law enforcement or other person for help;
- have a prewritten text message or distress code ready to send to an emergency contact;
- maintain a safe distance from anyone whose mannerisms indicate potential conflicts;
- come up with an excuse to return to their car or check in with their office; and
- ensure their vehicle is parked in front of a property, not in the driveway, to allow an unobstructed exit.

Further, an agent who maintains professionalism at all times with their appearance and conversation may discourage inappropriate or dangerous

Additional safety procedures

behavior from people they come in contact with over the course of their business. Agents can best set the tone for their interactions with prospective clients or customers by:

- highlighting their professional aptitude with limited personal information;
- providing only their office phone number and address;
- dressing professionally in person and in photos used in advertising;
- foregoing expensive jewelry and accessories; and
- ensuring all marketing material is polished and accurate. [See Chapter 5]

Broker implementation

Brokers have the ability to enforce **safety standards** and procedures for the benefit of the agents in their office. To prioritize personal safety, brokers are advised to consider implementing an office-wide *safety education program*. As part of this program, brokers are to review safety tips with agents, provide resources and standardize basic procedures to minimize risk.

A broker's safety plan may include:

- encouraging use of the buddy system as with a team;
- enforcing an office-wide distress code for use by agents in emergencies;
- requiring agents to provide daily itineraries or follow check-in procedures [See **RPI** Form 502];
- designating an emergency contact or network in the office [See **RPI** Form 501];
- developing procedures for handling a missing agent or other emergency; and
- helping agents create advertisements that maximize personal safety.

Implementing safety measures in a broker's office creates a secure environment for their agents and helps develop a dependable support system to build camaraderie during a crisis.

Further, brokers are encouraged to maintain and update records of an agent's contact information, license plate number and a copy of their driver license or identification card. [See **RPI** Form 501]

Agent violation of real estate law

Brokers are required to notify the CalBRE when they fire a salesperson for violating real estate law. The penalty for failing to notify the CalBRE ranges from a temporary license suspension to permanent revocation of the broker's license.¹⁷

However, the CalBRE recently noted that brokers rarely report these violations as required. Brokers fear (rightfully so in some cases) they will also be disciplined for failing to *properly supervise* their employee as required by law.

¹⁷ Bus & P C §10178

The CalBRE assures these brokers they will not be automatically suspect as a result of their former employees' actions. However, if the broker failed to oversee their employees or participated in unlawful activities themselves, they will be subject to disciplinary action.

Of course, the best course of action for a broker is to supervise all employees to ensure they act within the law. Any unlawful activity uncovered needs to be reported to protect the broker's own license. [See Chapter 2]

The other way the CalBRE may be alerted to unlawful activity is through a **consumer complaint**. An individual negatively affected by a licensee's activity may submit a complaint directly to the CalBRE, which then investigates that licensee.

Finally, the CalBRE completes routine audits on select brokerages. These audits can be the result of unannounced office surveys, in which a representative of the CalBRE visits a brokerage and observes the broker's business practices. If noncompliance is suspected, an official audit is ordered. In other cases, the CalBRE audits are ordered on random brokerages engaged in activities with a high risk of financial loss, like:

- mortgage loan brokers;
- property managers; and
- broker-owned escrows.

In these random audits, CalBRE reviews the brokerage's:

- trust fund records;
- licensing compliance;
- transaction files; and
- recordkeeping.

A sales agent's real estate activities need to be supervised at all times by their employing broker. When a broker fails to properly supervise their sales agents, they face review from the California Bureau of Real Estate (CalBRE) upon a complaint made by another licensee or member of the public.

At the core of broker supervision is the duty owed the CalBRE to be aware of the agent's activity on real estate transactions. Thus, the broker requires their employed agents, whether sales agents or associate brokers, to report when:

- a listing is taken;
- an offer is accepted; and
- the sale closes escrow.

Chapter 3 Summary

However, it's most prudent for brokers to have their agents report all transaction activity by documentation at every step of the process. Documentation provides primary evidence of the agent's activities which helps the broker fulfill their duty to supervise.

On entering into a listing employment, a physical client file is set up to house information and document all the activity which arises within the broker's office due to the existence of the employment.

For example, the file on a property listing for sale is to contain:

- the original listing agreement [See **RPI** Form 102 and 103];
- any addenda to the listing;
- all the property disclosure documents the seller and seller's agent provide to prospective buyers in the process of marketing the property [See **RPI** Form 304]; and
- an activity sheet for entry of information on all manner of file activity. [See **RPI** Form 520]

Everything that occurs as a result of the client employment is to be retained in the file. All records of an agent's activities on behalf of a client during the listing period are retained by the agent's broker for three years.

Funds received in the form of cash or checks made payable to the broker while acting as an agent need to be:

- deposited into the broker's trust account;
- held undeposited as instructed; or
- endorsed and handed to others entitled to the funds.

The broker needs to regularly account to the owner on the status, expenditure and location of the negotiable trust funds.

To prioritize personal safety, brokers are advised to implement an office-wide safety education program. As part of this program, brokers are to review safety tips with agents, provide resources and standardize basic procedures to minimize risk.

Brokers are required to notify the CalBRE when they fire a salesperson for violating real estate law. The penalty for failing to notify CalBRE ranges from a temporary license suspension to permanent revocation of the broker's license.

Chapter 3 Key Terms

client file	pg. 36
commingling	pg. 44
office manager.....	pg. 33
transaction coordinator.....	pg. 33
trust funds.....	pg. 42