

Introduction

Sole practitioner and principal brokers in Oregon are required to maintain adequate records as defined by law and rules of all professional real estate activity. Maintaining complete listing and transaction files assists in the monitoring of licensee activities, an important factor in complying with statutory and rule requirements, as well as in risk management.

The following lists of records are recommended based upon existing statutory and rule requirements for adequate records. In our enforcement of records requirements, Real Estate Agency staff understand that adequate records may result without applying “one size fits all” requirements.

This brochure concerns record keeping for listing and transaction files, *not* clients’ trust accounts. Rules regarding clients’ trust accounts can be found in Oregon Revised Statute 696.241 and Oregon Administrative Rule 863-015-0255.

Written Company Policy

License law and rules require each office to develop and maintain a written office policy. The policy shall minimally include:

1. Provisions on how to comply with rules on agency relationships.
2. Procedures to ensure protection of confidential information.
3. Provisions regarding supervision and control of licensees, including licensed personal assistants.

Brokers’ Contracts

SELLER REPRESENTATION

Oregon law places affirmative duties on sellers’ agents including reasonable care and diligence, honesty, presentation of all written offers, disclosure of material facts known by agent, accounting, loyalty, disclosure of conflicts of interest, maintaining confidential information, advising seller to seek

expert advice on matters outside of agents expertise, and to continuously make a good faith effort to find a buyer. A complete listing file helps fulfill those duties, and should include the following records:

Real Property Listings

1. A completed and signed copy of the listing.
2. Seller’s Property Disclosure Statement (completed and signed copy, with record by licensee that seller’s obligations and buyers’ right to rescind were explained to seller), or exemption notation.
3. Disclosed Limited Agency Agreement (If obtained at listing).
4. Evidence of ownership or right to sign the listing. This might be the listing packet/ title information, last deed, a land sale contract, county tax records, or other evidence of signing authority.
5. Verification of building and lot size: e.g. actual measurements, the tax assessor’s record, an appraisal, plat map, or metes & bounds legal description.
6. Zoning and flood zone information where applicable.
7. Tenant and lease or rental information.
8. Record of how pricing was established and reasons for any subsequent price changes: e.g. CMA, appraisal, assessed value, or owner’s input.
9. A written record of promises, pledges or agreements made by the listing licensee as part of the effort to obtain the listing.
10. Marketing activity: e.g. ad copy and date(s) of publication or copies of the actual ads, MLS sheet, any flyers, media scripts, MLS tour date, office tour, open house activity; information in computer file transferred to paper copy.
11. Listing modifications (signed extensions or price changes).
12. Evidence of timely supervision by manager (dated initials on all documents of

agreement including, but not limited to: original listing, price adjustments, and extensions).

13. Any estimates of net sales proceeds provided to seller that the broker may choose to provide.
14. As applicable: CC&Rs, by-laws, special assessments and any other specialized information.
15. Licensee’s diary notes, generated in the listing transaction.
16. Copies of correspondence and faxes to and from the seller or seller’s representative.

BUYER REPRESENTATION

Representation of a buyer may be achieved through a written, signed agreement, variously referred to as a buyer’s broker agreement, or a buyer listing, or through an oral agreement. These agreements impose upon licensees the affirmative duties of reasonable care and diligence, honesty, presentation of all written offers and communications between buyer and seller, disclosure of material facts known by agent, accounting, loyalty, disclosure of conflicts of interest, maintaining confidential information, advising buyer to seek expert advice on matters outside of the agent’s expertise, and to continuously make a good faith effort to find a property for the buyer.

Buyer’s Broker’s Files - Service Agreement

It is advisable to maintain the following records related to a buyer’s service agreement:

1. The service agreement (buyer’s broker agreement), including arrangements regarding fees.
2. Any writing, acknowledged by the buyer, containing the “want list” showing what the buyer is looking for, and willing to pay.
3. Financial qualifications of the buyer with documents showing financial ability and credit-worthiness, explaining or noting credit problems.

4. Pre-qualification letters obtained by the buyer from a lender.
5. Disclosed Limited Agency agreement (if applicable).
6. CMAs prepared for the buyer in connection with any actual or proposed purchase.
7. Records of promises, pledges or agreements made by the licensee as part of the effort to obtain the buyer’s broker agreement.
8. Marketing activity: e.g. ad copy and date(s) of publication or copies of the actual ads.
9. Record of properties shown.
10. Modifications to, and extensions of, the buyer’s service agreement.
11. Evidence of timely supervision by manager (dated initials on all documents of agreement, including service agreement, modifications, extensions).
12. Estimates of buyer’s down payment and closing costs if provided.
13. Licensee’s diary notes generated in representing the buyer.
14. Copies of correspondence and faxes to or from the buyer or buyer’s representative.

Buyer’s Broker’s Files - No Service Agreement

Records documenting buyer representation where no buyer’s service agreement exists should be kept with the Disclosed Limited Agency agreement (if applicable), and should include:

1. A record of properties shown.
2. CMAs prepared for the buyer in connection with actual or proposed purchase.
3. Good faith cost estimates provided to the buyer.
4. Licensee’s diary notes generated in representing the buyer.
5. Copies of correspondence and faxes to or from the buyer or buyer’s representative.
6. Pre-qualification letters obtained by the buyer from a lender.
7. Financial qualifications of the buyer.

Transaction Files

Records should be entered in the file in a timely manner as they are produced. Some items, such as settlement statements and records relating to occupancy arrangements, may not be available until or after closing. Similarly, during the escrow period, certain documents may be temporarily in the possession of the licensee or at a branch office location. However, principal brokers and sole practitioner should keep track of such records.

Deal files should contain the following records:

ACCEPTED OFFERS & SALE FAILS

1. Transaction number (sequential).
2. Full names and addresses of buyer(s) and seller(s), with telephone and fax numbers.
3. Disclosed Limited Agency agreement (if applicable).
4. Complete signed copy of the initial earnest money agreement, including offer, acceptance or counteroffer, acknowledgment, and any addendum or other document of agreement between the parties forming part of the initial agreement between them. Signatures and initials should include date and time.
5. Final agency acknowledgment to both parties.
6. A record of who presented the offer (and any counter offers) and to whom, along with any representations (such as the financial ability of the buyer) made by the licensees at the presentation.
7. Full legal description of the property.
8. Zoning and flood zone information where applicable.
9. Seller's Property Disclosure Statement, or exemption notation, together with evidence that the represented party's rights and/or obligations have been explained.
10. Copy of the earnest money tendered (check, money order, promissory note,

cash etc.). Do not color-copy, or same-size copy, cash.

11. Disposition of earnest money tendered (note redemption, deposit to trust account, receipt from escrow agent).
12. Copy of the listing or co-op office listing information. Many brokers combine the listing and sale files at close of escrow if it was their listing sold.
13. Evidence of timely supervision by the manager (dated initials on all documents of agreement).
14. Any addenda amending (or attempting to amend) the original agreement, including removal of contingencies.
15. CMAs prepared for the buyer or seller related to this sale.
16. Any estimates of buyer's downpayment and closing costs, and/or seller's net proceeds the broker may choose to provide.
17. Copies of inspection reports, repair estimates and clearances.
18. Record of buyer's progress in obtaining financing.
19. Preliminary title report, with evidence that licensee has reviewed it and discussed any significant issues raised by it with the represented party.
20. Copies of correspondence, including faxed messages, to or from the represented party or their authorized representatives.
21. Licensee's diary notes generated in the sale transaction.
22. A record of who attended closing and problems encountered.
23. Settlement statement(s).
24. Seller's forwarding address.
25. Reason for fail-sale if it occurred and disposition of earnest money.

REJECTIONS: OFFERS & COUNTEROFFERS

1. Disclosed Limited Agency agreement (if applicable).

2. Complete signed copy of the offer, rejection or counter offer(s). All signatures and initials should be identified as to their dates and times.
3. Final agency acknowledgment of existing agency relationship to both parties.
4. Copy of the earnest money tendered (check, money order, promissory note, cash). Do not color-copy, or same-size copy, cash.
5. Disposition of earnest money tendered (deposit to trust account, returned to offeror, receipt from escrow agent).
6. Evidence of timely supervision by the manager (dated initials on all documents of agreement or disagreement).
7. CMAs prepared for the buyer or seller related to this sale.
8. Estimates of buyer's downpayment and closing costs, and/or seller's net proceeds.
9. Copies of correspondence, including faxed messages to or from the represented party or their authorized representatives.
10. Licensee's diary notes generated in the proposed sale transaction.

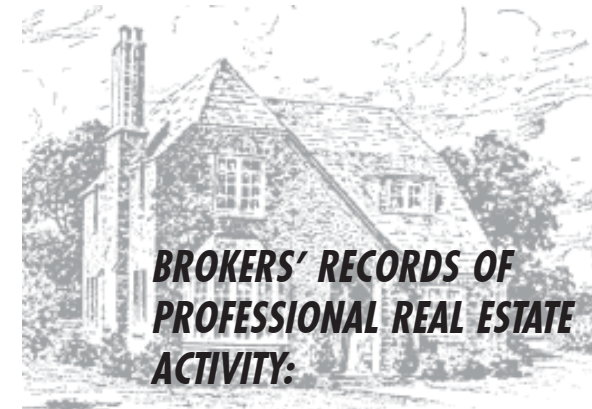
Final Comments

This brochure was developed to assist sole practitioner brokers, principal brokers and their licensees in keeping adequate, complete records of their activity. Good record keeping minimizes risk, assures compliance with statutory and rule requirements, and is a hallmark of a professional real estate licensee.

Agency staff are available at (503) 378-4170, selection 4, to answer record keeping questions. Office hours are 8:00 a.m. to 5:00 p.m. Information is also available on the Agency's website at www.rea.state.or.us.



Oregon Real Estate Agency



**BROKERS' RECORDS OF
PROFESSIONAL REAL ESTATE
ACTIVITY:**

*A Guide for Maintaining
Listing Agreements and
Transaction Files*

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