

## **INTRODUCTION**

The purpose of this handbook is to provide guidance to new and established salespersons in accordance with the laws governing the industry. This handbook should not be construed as legal advice nor is it intended to provide legal advice. Always consult an attorney for legal advice.

As defined in A.R.S. § 41-4001 (35), "Salesperson" means any person who, for a salary, commission or compensation of any kind, is employed by or acts on behalf of any dealer or broker of manufactured homes, mobile homes or factory-built buildings to sell, exchange, buy, offer or attempt to negotiate or act as an agent for the sale or exchange of an interest in a manufactured home, mobile home or factory-built building.

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## CHAPTER 1 – STATUTES AND RULES

**Note:** The word ‘Dealer’ is used in place of Broker or Retailer.

1. Every salesperson who holds an active license shall maintain on file with the Department a current residence address and shall notify the Department within five (5) working days of any change of address, of any discontinued employment, and where, if anywhere, the salesperson is currently working pursuant to A.R.S. § 41-4025(J). If a salesperson wishes to change his/her mailing address, telephone number, or email address, the salesperson must log in to his/her dashboard to submit an admin request change by following the instructions in the Portal User Guide that start on page 60 of the guide.
2. The scope of work that a salesperson can perform is determined by the license classification of the employing dealer. For example: If the employing dealer holds a D-8B license classification that allows that dealer to list used homes for resale and to sell those listed homes, the dealer’s salespersons may only list and sell used homes on behalf of the employing dealer. If the employing dealer holds a D-8 license, the salesperson may list and sell used homes on behalf of the employing dealer, sell new manufactured homes on behalf of the employing dealer, and sell used homes (that are dealer-owned inventory) on behalf of the employing dealer. Dealer license classifications, and the scopes of activity of each classification, are found in Arizona Administrative Code (“A.A.C.”) R4-34-203.
3. The license of a salesperson who is no longer employed by the dealer of record is deemed inactive. If the license has VALID status, a salesperson may request inactive status by submitting an admin request from the salesperson’s dashboard. Instructions start on page 60 of the Portal User Guide.
4. The license held by the licensee shall be posted in a conspicuous place on the premises where any business is being performed pursuant to A.R.S. § 41-4026(D).
5. The salesperson’s license number shall be written on any contract entered into by the licensee as required by A.R.S. § 41-4026(D). \*This would include listing agreements, addendums to listing agreements, offers to purchase, purchase contracts, or addendums to offers to purchase or purchase contracts.
6. In all brokered transactions (the sale of a listed home), a copy of the agency disclosure shall be given to the party or parties the Dealer represents pursuant to Arizona Administrative Code (“A.A.C.”) R4-34-303(A). Generally, salespersons (as agents of their employing dealers) give a copy of the agency disclosure to the parties being represented. Copies of the agency disclosure(s) must be maintained in the dealer’s sales file(s).
7. R4-34-301 requires the dealer maintain a record of all transaction documents. Records must be maintained for a period of 3 years from the date that a sale is consummated or terminated. In every transaction, a) the dealer shall provide the purchaser with a copy of all completed and signed documents; b) if the purchaser is unrepresented in a brokered transaction (i.e. purchaser buys a used home that is listed by the Dealer but is not represented by a Dealer, the listing dealer shall provide the purchaser with a copy of all completed and signed documents; and c) if the transaction is co-brokered, the listing dealer shall provide a copy of the listing agreement (and any addendum to the listing agreement) to the selling dealer and the selling dealer shall provide a copy of all completed and signed documents to the listing dealer.
8. Inactive status is for no more than two years. If a license is not reactivated/renewed prior to the expiration of the inactive status time period, the license is cancelled.
9. In a co-brokered transaction, the seller shall pay the commission shown on the listing agreement as the total commission pursuant to A.A.C. R4-34-303(D).

10. A Dealer shall include the Dealer's licensed business name in all advertising pursuant to A.A.C. R4-34-302 (A). There is no requirement that the Dealer's license number also appear.
11. In a brokered transaction, a Dealer shall not advertise or market the listed used home for more than the listed price pursuant to A.A.C. R4-34-302(B).
12. Under the exemptions stated in A.R.S. § 41-4028, a licensed real estate salesperson, who is licensed by the Arizona Department of Real Estate, does not need to obtain a salesperson license from the Arizona Department of Housing in order to act as a salesperson for a licensed Dealer. The salesperson does need to identify his or her real estate license number on any contract or listing that he or she enters into on behalf of the employing Dealer.
13. Licenses expire one year after the date of issuance. The salesperson's 'renew by' date, stated on the salesperson's license, will remain that month and day for as long as the salesperson holds the license. Refer to A.R.S. § 41-4027(A).
14. A non-renewed license may be late renewed up to one year from the date it was non-renewed. The late renewal of the license does not affect the next 'renew by date'. If non-renewed for more than one year, the license cannot be late renewed and a new license must be applied for from the salesperson's dashboard. Refer to A.R.S. § 41-4027(B).
15. At this time, salespersons do not test.
16. All earnest monies are required to be receipted. The Dealer's receipt book shall reflect all earnest monies received and shall be at the minimum in duplicate and consecutively numbered pursuant to A.R.S § 41-4030(F). \*If the salesperson takes possession of a customer's check that is made payable to a title company, the customer's check must be receipted in a receipt book that is for the receipting of such funds. The customer's check must be delivered to the title company within two (2) business days from the date that the Dealer/salesperson took possession of the customer's check and a title company receipt must be obtained from the title company to evidence the date that the title company received these funds from the Dealer/salesperson. Refer to A.R.S. § 41-4030(F) and (G). \*Salespersons should adhere to their employing Dealer's policies regarding who is authorized to receipt customer funds and who is authorized to deposit those funds into a Dealer trust account or Dealer escrow account or who is authorized to deposit funds with a title company. In some instances, the employing Dealer may limit who can receipt and deposit funds or otherwise assign these duties to a specific person.
17. Ensure that escrow instructions contain identification of the escrow agent with information containing at least the name, address and telephone number of the escrow agent. Refer to A.R.S. § 41-4030(I). \*If using a title company's escrow instructions that refer to A.R.S. 41-2180, advise the title company that statute number ceased to exist in 2016. The correct statute number is A.R.S. 41-4030.
18. A Dealer may not pay a salesperson from the Dealer's trust account or Dealer's escrow account. Refer to A.R.S. § 41-4030(N) that specifies who the Dealer may pay from the Dealer's trust account or Dealer's escrow account if applicable to the sale.

19. The Department has no statutory authority in complaints from salesperson's regarding unpaid commissions. The salesperson should contact the National Labor Relations Board.
20. Before the sale of a manufactured home each Dealer shall convey notice in writing to the prospective buyer that the utility service facilities for manufactured home spaces are not standardized and compatibility between a chosen manufactured home space and a manufactured home to be purchased is the buyer's responsibility. Refer to A.R.S. § 41-4040 (D). This does not pertain to a used home sold 'where is'.
21. Before the sale of a used manufactured home (or mobile home), each dealer shall notify the prospective buyer in writing of the existence and amount of any tax lien on record against the unit. Refer to A.R.S. § 41-4040(D).
22. Each Dealer shall provide a notification form to the buyer, as approved by the board, part of which shall contain the buyer's signature and other information to be completed by the Dealer that when forwarded to the Department constitutes compliance with the reporting requirements of subsection B of this section. Refer to A.R.S. § 41-4040(E). This statute is referring to the Homeowner Information Bulletin that is part of the Dealer's sales report (if sales were closed for the reporting period – i.e. month/year).
23. It is unlawful for any person to engage in the business of a salesperson of manufactured homes, mobile homes or factory-built buildings unless the person is licensed as a salesperson by the Department pursuant to A.R.S. § 41-4047(3). \*This statute does not apply to properly licensed real estate salespersons who are acting as a salesperson for a licensed Dealer.
24. A person shall not advertise or offer for sale a mobile home that has been brought into this State unless it meets the standards adopted pursuant to this chapter and displays the proper State certificate pursuant to A.R.S. § 41-4048(D).
25. A person may not remove or cause to be removed a certificate or a notice of violation without prior authorization of the Department pursuant to A.R.S. § 41-4048(E).
26. A manufacturer, dealer or salesperson shall not knowingly sell a unit regulated by this chapter to an unlicensed person for the purpose of resale, nor shall a dealer offer for sale or sell a new unit manufactured by an unlicensed person pursuant to A.R.S. § 41-4048(K).
27. In addition to any other obligations imposed by law or contract during the term of a listing agreement, a licensee who has agreed to act as an agent to offer a mobile home, manufactured home or factory-built building for sale shall promptly submit all offers to purchase the listed unit from any source to the client. The offers shall be in writing and signed and dated by the party making the offer and the client on receipt. A copy of the executed document shall be maintained as part of the record of sales. Refer to A.R.S. § 41-4048(L).
28. Unless otherwise stated in the purchase contract, a dealer selling a mobile home, manufactured home or FBB shall know the ordinances of the town, city, or county where the unit is to be installed regardless of whether the dealer is obligated to provide for the delivery or installation of the unit pursuant to A.A.C. R4-34-201(E).

29. Upon consummation of a brokered transaction, the seller's dealer shall provide the seller with a closing statement that includes an accounting of all expenses charged to the seller, all pro-rations, and all credits pursuant to A.A.C. R4-34-303(C).

30. The seller's dealer shall prepare an addendum to the listing agreement if any of the terms of the listing agreement change. The seller's signature is required for the addendum to be valid. The addendum to the listing agreement shall reflect the date the seller signs the addendum to the listing agreement. Refer to A.A.C. R4-34-303(E).

31. If the seller or dealer elects to finance the unpaid balance reflected on the offer to purchase or purchase contract, the dealer shall: 1. Maintain evidence of the original portion of the purchase price being financed by the seller or dealer, and 2. Maintain evidence the title has been transferred into the name of the purchaser and the lienholder's position has been secured on the title. Refer to A.A.C. R4-34-303(F).

32. A licensee handling the sale of a used manufactured home, mobile home, or used factory-built building is required to disclose to the purchaser in writing, at the time that the purchaser signs the contract, that the purchaser may request in writing the use of an independent escrow account, and that the transaction will otherwise be handled through a trust account controlled by the licensee. Refer to A.R.S. 41-4030(C). \*This requirement does not apply to a dealer who uses a title company in all transactions.

33. Grounds for disciplinary action against a salesperson license may include the following pursuant to A.R.S. § 41-4039.

- (1) Failure in any material respect to comply with this article or article 3 of this chapter.
- (3) Misrepresentation of a material fact by the applicant in obtaining a license.
- (4) Aiding or abetting an unlicensed person or knowingly combining or conspiring with an unlicensed person to evade this article or article 3 of this chapter, or allowing one's license to be used by an unlicensed person or acting as an agent, partner or associate of an unlicensed person with intent to evade this article or article 3 of this chapter.
- (5) Conviction of a felony.
- (6) The doing of a wrongful or fraudulent act by a licensee that relates to this article or article 3 of this chapter, including failure to comply with section 41-4030, subsection A, or the doing of any other wrongful or fraudulent act in conjunction with the sale, transfer or relocation of a mobile home in this State.
- (7) Departure from or disregard of any code or any rule adopted by the board.
- (8) Failure to disclose or subsequent discovery by the Department of facts that, if known at the time of issuance of a license or the renewal of a license, would have been grounds to deny the issuance or renewal of a license.
- (9) Knowingly entering into a contract with a person not duly licensed in the required classification for work to be performed for which a license is required.
- (10) Acting in the capacity of a licensee under a license issued under this article in a name other than as set forth on the license.
- (11) Acting as a licensee while the license is under suspension or in any other invalid status (i.e. non-renewed or revoked).
- (12) Failure to respond relative to a verified complaint after notice of such complaint.
- (14) False, misleading or deceptive sales practices by a licensee in the sale or offer of sale of any unit regulated by this article or article 3 of this chapter.

- (16) Acting as a salesperson while not employed by a dealer.
- (17) As a salesperson, representing or attempting to represent a dealer other than by whom the salesperson is employed.
- (18) Acting beyond the scope of activity authorized by the salesperson's license classification of the employing dealer.
- (19) Failure by a salesperson to promptly place all cash, checks and other items of value and any related documents received in connection with a sales transaction in the care of the employing dealer.
- (20) Failure to provide all agreed on goods and services.
- (22) Failure of the licensee to work only within the scope of the license held.
- (23) An action by a licensee, who is also a mobile home park owner, manager, agent or representative, that restricts a resident's or prospective resident's access to buyers, sellers or licensed dealers or brokers in connection with the sale of a home or the rental of a space, that the Department finds constitutes a violation of section 33-1434, subsection B or section 33-1452, subsection F or that violates any law or regulation relating to fair housing or credit practices.

## CHAPTER 2 – FREQUENTLY ASKED QUESTIONS

1. **How do I change my employing dealer of record? ANSWER:** Request administrative change from your salesperson dashboard. Follow the instructions that begin on page 60 of the Portal User Guide.
2. **How do I change my last name on my license? ANSWER:** Request administrative change from your salesperson dashboard. Follow the instructions that begin on page 60 of the Portal User Guide. Upload copy of your current Arizona driver's license that was issued in the new last name or copy of current U.S. passport or passport card in the new last name.
3. **How do I change my mailing address or telephone number? ANSWER:** Request administrative change from your salesperson dashboard. Follow the instructions that begin on page 60 of the Portal User Guide.
4. **May I sell park trailers (park model RVs) under my license? ANSWER:** No. The Department does not license salespersons, dealers, installers or manufacturers of park trailers/park model RVs. You may not use your ADOH-issued license on any listing agreement or purchase contract that is for a park trailer/park model RV.
5. **May I work for more than one dealer at a time? ANSWER:** No.
6. **I am leaving my employing dealer of record to go to work for another dealer. Do my listings go with me? ANSWER:** No. The listings are the property of the dealer that you were employed by at the time you executed the listing agreements on that dealer's behalf.
7. **A past employing dealer is refusing to pay me commission on sales that I started while employed by that dealer. Who do I file a complaint with regarding this? ANSWER:** The National Labor Relations Board. The Department of Housing does not have the statutory authority to entertain these types of complaints.
8. **We are co-brokering a transaction with a licensed real estate company. Do we let the licensed real estate company take the lead in the transaction? ANSWER:** No. While the Department is not opposed to an ADOH-licensed dealer co-brokering with a licensed real estate company, it is our position that the ADOH-licensed dealer must take the lead in the transaction and that all applicable statutes and Rules of the Department of Housing be followed in the transaction.
9. **I believe that I witnessed unlicensed dealer activity. How do I report this to the Department? ANSWER:** Send a letter or email to the Department that provides the name of the unlicensed person or unlicensed entity, their mailing address and phone number. Describe the unlicensed activity and include copies of any documentation or photos that you have they may support your allegations.
10. **Does the Department have 'ethics' in its statutes or Rules? ANSWER:** We do not. Because 'ethics' is not addressed in our statutes or Rules, we have no statutory authority to take administrative action against a licensee that may have engaged in slander or libel against another licensee nor are we able to take administrative action against licensees that have been 'rude' or 'vulgar' when speaking to others.
11. **I have a new employing dealer of record. Am I able to help to close sales that I had with my former employing dealer of record? ANSWER:** No. You may only work for one dealer at a time. If you have changed your employing dealer of record, you cannot go back and finish a sale that you started when employed by the previous employing dealer of record.



12. I wrote an earnest monies receipt for a \$500.00 check that a customer gave to me. The customer returned to the sales office with \$500.00 cash and asked for his check back. We still have his check in the sales office. It has not yet been deposited into the dealer trust account. What can I do?
- ANSWER:** Check with your sales manager or the qualifying party of your employing dealership to see how they wish for you to handle the situation. With their permission, you could request that the customer give you the earnest monies receipt that you gave to him for the \$500.00 check, staple that receipt to the copy of the same receipt that is in the receipt book, and write 'VOID' on those receipts. You would then write a new receipt for the \$500.00 cash. Again, you need to check with your employing dealer to find out how he or she wishes for you to handle the situation. *If the customer is unable or unwilling to return the receipt that you issued for the \$500.00 check, we strongly recommend that you not write another receipt for the \$500.00 cash because it would then appear that the dealer received \$1,000.00 from the customer rather than \$500.00.*