INTRODUCTION

The Arizona Department of Housing is established to further the public interest of safety and welfare by maintaining and enforcing standards of quality and safety for manufactured homes, mobile homes, and factory-built buildings by reducing hazards to life and property through the maintenance and enforcement of the state fire code. It is also the purpose of the Department to establish a procedure to protect the consumer of such products and services.

The purpose of this handbook is to provide guidance to new and established retailers and brokers 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.

TABLE OF CONTENTS

CHAPTER 1 – GENERAL STATEMENTS	Page 3
CHAPTER 2 – DEFINITIONS	Page 5
CHAPTER 3 – TRUST/ESCROW ACCOUNTS	Page 7
CHAPTER 4 – DOCUMENTS SUBJECT TO AUDIT	Page 9
CHAPTER 5 – ACCEPTABLE EVIDENCE OF CONSUMMATION	Page 17
CHAPTER 6 – ADDITIONAL INFORMATION AND REQUIREMENTS FOR SOME COMMON TYPES OF SALES TRANSACTIONS	Page 22
CHAPTER 7 – WHAT TO EXPECT WHEN AN AUDIT IS CONDUCTED	Page 26
CHAPTER 8 – FREQUENTLY ASKED QUESTIONS	Page 28
EXAMPLES	Page 48

CHAPTER 1 – GENERAL STATEMENTS

1. The purpose of this handbook is to assist licensed retailers and brokers in understanding the Department's statutes and rules governing trust and escrow account requirements.

2. The Department shall conduct an audit of each retailer's/broker's trust or escrow account, including any transactions with an independent escrow account, at least once every two years pursuant to A.R.S. § 41-2180 (D).

3. When selling a manufactured home, mobile home, or residential factory-built building in conjunction with the sale of land, licensed real estate brokers or licensed real estate salespersons that also hold the required retailer or salesperson's license with the Department are exempt from the trust and escrow requirements of A.R.S. § 41-2180 pursuant to A.R.S. § 41-2180 (T).

4. Audits may be conducted at the principal place of business only or may be conducted by mail. If a retailer's/broker's principal place of business, as stated on the license application, is not within the State of Arizona, all records will be audited at the retailer's/broker's licensed Arizona branch location or by mail.

5. Records must be retained for a period of three years pursuant to A.R.S. § 41-2180 (P). A retailer or broker shall maintain records containing all transaction documents pursuant to A.A.C. R4-34-301 (E).

6. Except for the Homeowner Information form and the Walk-through Checklist, the Department does not have statutory authority to prescribe the forms used by retailers/brokers in sales transactions; however, this handbook will provide you with information and examples to enable you to meet the minimum requirements for trust/escrow audits.

7. In all retail transactions, the retailer shall provide the purchaser with completed and signed copies of all documents pertaining to the transaction pursuant to A.A.C. R4-34-301 (A).

8. In all brokered transactions, each broker shall provide the seller and the purchaser with completed and signed copies of all documents pertaining to the transaction pursuant to A.A.C. R4-34-301 (B) & (C).

9. In a co-brokered transaction, the listing broker shall provide a copy of the listing agreement to the selling broker and the selling broker shall provide a copy of all documents pertaining to the transaction to the listing broker pursuant to A.A.C. R4-34-301 (D).

10. 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 (E). The seller shall not be charged more commission than what is stated on the listing agreement.

11. A retailer or broker shall include the retailer's/broker's licensed business name in all advertising pursuant to A.A.C. R4-34-302 (A).

12. In a brokered transaction, the retailer/broker shall not advertise or market the listed used home for more than the listed price pursuant to A.A.C. R4-34-302 (B).

CHAPTER 2 – DEFINITIONS

For purposes of this handbook, the following are definitions of various terms:

1. Affidavit of Affixture – A document used to record a land deed and a manufactured/mobile home or factory-built building installed on the land as one piece of real property. This document is recorded by the County Recorder's Office. Once this document is executed, the unit no longer has a title if a used unit or no longer has Manufacturer's Certificates of Origin ("MCOs") if a new unit.

2. Agency Disclosure – A document that specifies the party or parties which the agent is representing in a brokered transaction either as a seller's agent, purchaser's agent, or a dual agent representing both.

3. Agent – A retailer or broker who is authorized to act on behalf of either a seller or purchaser in a brokered transaction or as a dual agent representing both.

4. Board – The Board of Manufactured Housing.

5. Bona fide Lender (as used in A.R.S. 41-2180.R.) – A bank, credit union, savings and loan or other financial institution that has financed the unit which is the subject of the sale or any party who has a lien documented on the certificate of title of the unit which is the subject of the sale.

6. Broker – A person/company licensed by the Department who, on behalf of another, sells, exchanges, buys, offers or attempts to negotiate or act as an agent for the sale or exchange of used manufactured or mobile homes. A broker cannot own inventory.

7. Brokered Transaction – A transaction involving a licensed retailer/broker, a purchaser(s) and a seller(s).

8. Co-brokered Transaction – A transaction involving two licensed retailers/brokers, one representing the purchaser(s) and one representing the seller(s).

9. Consummation of sale – Proof that the purchaser has received all goods and services that the dealer or broker agreed to provide at the time the contract was entered into or the transfer of title.

10. Dealer – Also know as a Retailer. A person/company licensed by the Department to sell, exchange, buy, offer or attempt to negotiate or act as an agent for the sale or exchange of factory-built buildings, subassemblies, manufactured homes or mobile homes. A lease or rental agreement by which the renter or lessee acquires ownership of the unit is considered a sale.

11. Department – The Department of Housing.

12. Earnest Money – All monies given by a purchaser(s) or a financial institution(s) to a dealer or broker before consummation of the sale. This would include: any monies (cash/checks/money orders/wire transfers etc.) received from the purchaser or received on behalf of the purchaser; any monies from consumer-arranged financing received from the purchaser or on behalf of the purchaser from the lender; any construction loan monies where the purchaser is the borrower; and any monies received from dealer-arranged financing for the purchaser.

13. Lease with Option to Purchase – A lease under which the lessee has the right or option to purchase the property.

14. New Unit – A unit or subassembly not previously sold, bargained, exchanged or given away to a purchaser.

15. Offer to Purchase – In a brokered transaction, a written proposal to purchase a listed used home that a broker presents to a seller for acceptance or rejection.

16. Retailer – Also known as Dealer. A person/company licensed by the Department to sell, exchange, buy, offer or attempt to negotiate or act as an agent for the sale or exchange of factory-built buildings, subassemblies, manufactured or mobile homes. A lease or rental agreement by which the renter or lessee acquires ownership of the unit is considered a sale.

17. Used Unit – A unit that has been sold, bargained, exchanged or given away from a purchaser who first acquired the unit which was titled in the name of such purchaser.

*All definitions reference Arizona Revised Statutes, Section 41-2142 *et seq*, Arizona Administrative Code R4-34-101.3 *et seq* and R4-34-303 *et seq.*

CHAPTER 3 – TRUST/ESCROW ACCOUNTS

1. Each properly licensed retailer/broker who sells mobile homes, used manufactured homes or used factory-built buildings that were designed for use as residential dwellings that have a purchase price of less than fifty thousand dollars ($50,000.00) shall maintain a trust account or an escrow account with a financial institution or escrow agent pursuant to A.R.S. § 41-2180 (D).

2. Beginning July 1, 2012, each dealer shall establish an independent escrow account with an independent financial institution or escrow agent authorized to handle such an account in this State for each transaction involving:

    - A new manufactured home
    - A new factory-built building designed for use as a residential dwelling
    - A manufactured home, mobile home or factory-built building designed for use as a residential dwelling that is previously owned and that has a purchase price of fifty thousand dollars ($50,000.00) or more.

3. The owner of a mobile home park who also is or owns a dealership licensed to sell new units may sell a <u>new</u> manufactured home or a <u>new</u> factory-built building designed for use as a residential dwelling as a licensee, using the dealership's trust or escrow account with a financial institution, if all of the following apply:

    - The home will be sited in a mobile home park that is owned by the park owner.
    - At the time of the sale, the park owner has on file at the office of manufactured housing the name and address of all mobile home parks owned by the park owner, the name, address and license number of the licensed dealership and documentation showing to the satisfaction of the office of manufactured housing that the park owner either holds the dealer license, owns a majority interest in the dealer license or is controlled by an entity that holds a controlling interest in the dealer license.
    - At the time of the sale, the licensed dealership has posted with the office of manufactured housing a dealer bond in an amount of at least one hundred thousand dollars ($100,000.00) in a form satisfactory to the office of manufactured housing covering sales by parks sharing common control.

4. The trust account or escrow account must be established with a financial institution or escrow agent located in the State of Arizona pursuant to A.R.S. § 41-2180 (A) and (D).

5. A retailer/broker may maintain only one trust/escrow account at a financial institution pursuant to § A.R.S. 41-2180 (D). The Department may grant an exception to this if the retailer/broker has designated a trust/escrow account with a financial institution that does not have a branch office in the area of the retailer's/broker's licensed branch location.

6. In order to designate a trust/escrow account, a retailer/broker must complete, sign and provide the Department with the Trust or Escrow Account and Authorization for Release of Information form for their designated trust/escrow account pursuant to A.R.S. § 41-2180 (E) & (F). The form sent to the Department must have an original signature and not be a copy. A retailer/broker may designate an Arizona title company instead of an Arizona financial institution. In this situation, the retailer/broker will show the account number on the Trust or Escrow Account and Authorization for Release of Information form as "various" since each transaction will have its own escrow account number assigned to it. (See form on page #38.)

7. A retailer/broker may designate and utilize both a trust/escrow account with an Arizona financial institution and an Arizona title company.

8. A retailer/broker may keep no more than $200.00 of their own money in the trust/escrow account. These funds are for the purpose of offsetting bank service charges pursuant to A.R.S. § 41-2180 (K). The retailer/broker must keep funds in the trust/escrow account, up to $200.00, to ensure that service charges do not come out of a purchaser's funds for a pending sales transaction. If the trust/escrow account earns interest, the interest and any other retailer/broker funds must stay within the $200.00 limit.

9. A trust/escrow account cannot be a "sweep" account. All funds deposited in the trust/escrow account for pending sales must remain in that account at all times until an application for title transfer has been made or the transaction has been consummated or terminated pursuant to A.R.S. § 41-2180 (N) (1) and (2) or as provided in A.R.S. § 41-2180 (R) regarding flooring/inventory payoff.

10. The trust/escrow account, designated on the Department's Trust or Escrow Account and Authorization for Release of Information form, is to be used to hold monies related to the purchase of mobile/manufactured homes and residential factory-built buildings only. No other funds, except for up to $200.00 of the retailer's/broker's funds to offset services charges, as described above in Item #8, can be placed in this account.

11. If the retailer/broker wishes to change trust/escrow accounts, you must provide the Department with a completed and signed Trust or Escrow Authorization and Release of Information form and a copy of the signature card or account application for the new trust/escrow account. The form sent to the Department must have an original signature and not be a copy. You must make a lump deposit of all funds for pending transactions from the previous trust/escrow account to the new trust/escrow account. As soon as all outstanding checks, etc. clear the previous trust/escrow account, you must provide the Department with a copy of a letter from the financial institution stating that the previous account, including account number, has been closed. A bank statement showing a zero balance will not be sufficient because an account can remain open with a zero balance. If you are changing title companies, you must provide the Department with a completed and signed Trust or Escrow Authorization and Release of Information form. The form sent to the Department must have an original signature and not be a copy. You must also provide the Department with a signed letter from the title company (on their letterhead) that states that the title company is willing to handle mobile home/manufactured home only sales transactions.

CHAPTER 4 – DOCUMENTS SUBJECT TO AUDIT

1. Purchase Contract – This document must contain the date of contract, retailer's/broker's licensed business name pursuant to A.R.S. § 41-2186 (10) and license number issued by the Department pursuant to A.R.S. § 41-2176 (E), the name(s) of the salesperson(s) involved in the transaction and their license number(s) issued by the Department pursuant to A.R.S.
   § 41-2176 (E), all agreed on goods and services (i.e. setup, awnings, air conditioner, etc.), trade-in information (if applicable), description of the unit being purchased which includes the manufacturer's name, serial number and year of the unit, full purchase price of the unit being purchased, amount of the cash down payment (all funds received for the sale at the point of writing the purchase contract), "as agreed" amount (any additional deposits to be made at a later date), a statement notifying the purchaser of the right to designate a cosmetic complaint date and a space to make this designation pursuant to A.R.S. § 41-2182.01., signature of the retailer's/broker's representative, signature(s) of the purchaser(s), and any additional necessary information. If changes are made to a purchase contract, an addendum to the purchase contract should be completed. The addendum should include the date of the addendum, the name of the purchaser(s), a description of the unit (as described above), the signature of the retailer's/broker's representative, the signature of the purchaser, a description of change(s) to the purchase contract, and any change(s) to the purchase price due to the change(s) in the purchase contract. A copy of the purchase contract and all addendums should be given to the purchaser and a copy of the purchase agreement and all addendums should be placed in each sales file.

2. Compatibility Notice – The retailer/broker must give a written statement to the prospective purchaser which states that the utility service facilities for mobile/manufactured home spaces are not standardized and compatibility between a chosen unit and the unit to be purchased is the purchaser's responsibility pursuant to A.R.S. § 41-2187 (D). This statement must be signed and dated by the purchaser(s) on the same day or prior to the date of the purchase contract. A copy of this notice should be given to the purchaser and a copy placed in the sales file. (See example on page #49.)

3. Notice of Tax Lien – Before the sale of a used unit, the retailer/broker must notify the prospective purchaser(s), in writing, of the existence and amount of any tax lien on record against the unit pursuant to A.R.S. § 41-2187 (D). A copy should be given to the prospective purchaser(s) and a copy should be placed in the sales file.

4. Earnest Money Receipts – All funds received from the purchaser or on behalf of the purchaser, prior to the date of consummation of the sale or on the same day as consummation of the sale, must be receipted in the retailer's/broker's earnest money receipt book the day the earnest money is received. This receipt book must be at least in duplicate and consecutively numbered pursuant to A.R.S. § 41-2180 (G). A copy of the earnest money receipt(s) should be given to the purchaser. A copy of the earnest money receipt(s) should also be placed in each sales file.

    - Earnest money received by the retailer/broker, which is going to be deposited with a title company (such as a buyer's check that is made payable to the title company), should be receipted in either the retailer's/broker's earnest money receipt book with a notation that it was received on behalf of the title company OR these monies may be receipted in a different receipt book. The Department must be able to determine the dealer's date of receipt so that it can be determined that the dealer or broker gave or delivered these funds to the title company within two (2) business days from the date of dealer's receipt.

    - The purchase contract cannot be used as a receipt for earnest money.

    - Funds which are received by the retailer/broker after consummation should still be receipted in the retailer's/broker's earnest money receipt book. This will allow the Department to determine that the funds were received after consummation and were not required to be deposited into the retailer's/broker's trust/escrow account or with the title company.

5. Earnest Money Deposit Slips - Earnest money must be deposited into the retailer's/broker's trust/escrow account or deposited with the title company within two business banking days of receiving the funds pursuant to A.R.S. § 41-2180 (H). Earnest money received in a brokered transaction cannot be held until acceptance of the offer nor can earnest money be held at the purchaser's request. The seller's broker shall place all earnest money deposits received in connection with a sales transaction in the broker's trust or escrow account in accordance with A.R.S. § 41-2180. A copy of the financial institution's validated trust/escrow deposit slip, which shows the account number, date of deposit and amount of deposit, should be placed in the sales file for each earnest money deposit pursuant to A.R.S. § 41-2180 (L). The purchaser's name must be written on the deposit slip pursuant to A.R.S. § 41-2180 (L). Multiple deposits can be made on one deposit slip; however, the name of each purchaser and the amount of each of their deposits must be listed on the deposit slip. A copy of the financial institution's validated trust/escrow account deposit slip should be placed in each of the applicable sales files. *Note: If an earnest money deposit is being placed with a title company, the title company's dated escrow receipt will be used instead of a deposit slip. A copy of the escrow receipt should be placed in the sales file.*

6. Evidence of Consummation – The retailer/broker must retain acceptable evidence of consummation in each sales file. All funds received by the retailer/broker in a sales transaction must remain in the retailer's/broker's trust/escrow account or with the title company until the retailer/broker obtains evidence of one of the following:

    A. An application for title transfer has been made in the name of the purchaser. Please refer to Chapter 5 – Acceptable Evidence of Consummation for a list of documentation which will evidence this.

    B. The transaction involved is consummated or terminated and a complete accounting is made. "Consummation of sale" means that the purchaser has received all goods and services that the retailer/broker agreed to provide at the time the contract was entered into (i.e. all goods and services have been satisfied).

    C. If an overpayment is made by a purchaser, the retailer/broker may refund the overpayment to the purchaser directly from the trust/escrow account at any time during the transaction.

    D. All earnest money that has been deposited into the retailer's/broker's trust or escrow account may be transferred directly from the retailer's/broker's trust/escrow account to an Arizona title company so that the title company can disburse funds to pay off the manufacturer, bona fide lender flooring the home, all applicable installers/contractors, pay recording fees to proper authorities, and pay the retailer or broker at the close of the transaction. The retailer or brokers must obtain a copy of the final, dated settlement statement and maintain this document in the respective sales file.

    E. A retailer may release earnest money from the trust/escrow account to pay for flooring or inventory for the unit that is the subject of the transaction for which the earnest monies were provided, to a financial institution that has financed the unit which is the subject of the sale or other bona fide lender that has a lien recorded on the Certificate of Title of the unit which is the subject of the sale, directly from the retailer's trust/escrow account no more than ten business days before the completion date (i.e. date of consummation) pursuant to A.R.S. § 41-2180 (R).

    F. Payments from the title company to pay for the land, the unit, site work, etc., if the payments are made directly from the title company to the land owner, the lien holder, the unit manufacturer or flooring company or the installer/contractor, are not required to be deposited into the trust/escrow account provided the retailer/broker is not listed as a co-payee on these payments. Any funds paid to the retailer/broker from the title company, financial institution, or purchaser(s) prior to consummation are considered earnest money pursuant to A.R.S. § 41-2142 (13) and must be receipted, deposited to the trust/escrow account, and held in the trust/escrow account until consummation and/or title transfer pursuant to A.R.S. § 41-2180 (N).

G. Payments from the lender on a stage funded construction loan to pay for the land, the unit, site work, etc., if the payments are made directly from the lender to the land owner, the lien holder, the unit manufacturer or flooring company or the installer/contractor, are not required to be deposited into the trust/escrow account provided the retailer/broker is not listed as a co-payee on these payments. Any funds paid to the retailer/broker from the financial institution or purchaser prior to consummation are considered earnest money pursuant to A.R.S. § 41-2142 (13) and must be receipted, deposited to the trust/escrow account, and held in the trust/escrow account until consummation and/or title transfer pursuant to A.R.S. § 41-2180 (N).

7. Ledger – The retailer/broker must maintain an earnest money ledger pursuant to A.R.S. § 41-2180 (M). This ledger may be maintained by hand or on computer. The ledger must contain the purchaser's name, the amount(s) received, the date(s) of receipt, the date(s) of deposit, the date(s) of withdrawal, the amount of each withdrawal, the name of the payee for each withdrawal, the check number for each withdrawal, and the daily balance in the trust/escrow account. Payments to the purchaser (refund), seller (if a brokered transaction), manufacturer (if a new unit), flooring company (if retailer has the unit floored with a financial institution), lien holder (if a unit has an existing lien that must be paid off), and/or the retailer/broker, whichever are applicable, should be made from the trust/escrow account. All other payments such as payments for sales tax, payments to salespersons, payments to installers/contractors, etc. cannot be paid from the dealer's trust/escrow account. All of the (applicable) statutorily allowed payments from the trust/escrow account must be made only after the sale has been consummated or application for title transfer has been made with the exception of refund to purchaser. Your ledger should identify all pending sales transactions at any given time by identifying the names of these purchasers and the amounts deposited for each of these purchasers. Some computer programs have the capability to print a list of all open sales with deposits in the trust/escrow account. If you are keeping your ledger by hand, we suggest that you highlight all deposit entries once the funds have been withdrawn from the trust/escrow account. This would leave only deposits for pending sales un-highlighted. You may use a balance sheet type of ledger, which would contain entries for all customer deposits into the trust/escrow account (see example on page #50), or you may use a client type of ledger, which would have a ledger card for each customer. Each card would have the entries for that specific customer only. (See example on page #51.)

8. Proof of Retailer Owned Inventory – If a retailer sells a unit that was a part of their inventory, the retailer should place evidence that the unit is the retailer's property in the sales file. If the unit was purchased by the retailer, a copy of the purchase contract where the retailer purchased the unit, a copy of a bill of sale for the unit, or a copy of the check written by the retailer to purchase the unit would be acceptable evidence. If the unit is a trade-in from another sale, a copy of the purchase contract where the unit was taken as a traded-in would be acceptable evidence. Proof that the retailer owned the inventory when it was sold is needed in order to show that no payment to a seller, lien holder, etc. was due from the trust/escrow account.

9. Installer/Contractor Invoices – All installer/contractor invoices for all agreed on goods and services should be in each sales file pursuant to A.R.S. § 41-2186 (19). If you choose, you may keep a detailed list of the goods and services and the name of the installer/contractor who performed the work in each sales file and keep the invoices in an installer/contractor file. Properly licensed installers/contractors must be used to perform any work that requires a license pursuant to A.R.S. § 41-2186 (4) and (9). You may use properly licensed installers, licensed by the Department, and properly licensed contractors licensed by the Registrar of Contractors. We suggest you obtain a copy of each installer's/contractor's license before hiring them to perform work and check with the Department or the Registrar of Contractors (whichever issued the license) to determine what work that license scope can perform. Please note that the Department does not recognize a "handyman" exemption. This exemption is in the Registrar of Contractor's statutes only. For further information regarding the Registrar of Contractor's statutes, please contact their office. If a license to perform work is required by the Department, you must use a properly licensed installer/contractor to perform that work.

10. Information for Buyers of New Manufactured/FBB Homes form and Manufactured Housing Homeowner Information Bulletin – Both of these forms are referred to as "Homeowner Information Bulletins" and, when received by the Department, constitute compliance with the statutory reporting requirement. The Information for Buyers of New Manufactured/FBB Housing form must be completed by the retailer and signed and dated by the purchaser(s) of new manufactured homes or new residential factory-built buildings. (See example on page #52.) The Manufactured Housing Homeowner Information Bulletin form must be completed by the retailer/broker and signed and dated by the purchaser(s) for used manufactured homes or used residential factory-built buildings pursuant to A.R.S. § 41-2187 (E). (See example on page #53.) All forms, for consummated sales in a given month, must be sent to the Department by the fifteenth day of the following month (i.e. – A sale is consummated in August. The form and any applicable recovery fund fees must be received by the Department by September 15th.) If you had no sales consummated for a given month, you must still send a report to the Department, by the fifteenth of the following month, which states that you have had "no sales" for that month pursuant to A.R.S. § 41-2187 (B). This statement should also include the retailer's/broker's license number and licensed business name. In addition to serving as your sales report, these forms provide the purchaser with information about the Department and about complaint procedures.

11. Walk-though Checklist – This form applies to new manufactured homes only. Within thirty days after the date of installation or the designated cosmetic complaint date, the retailer or manufacturer must conduct a walk-though of the home with the purchaser and must complete a checklist form as approved by the Board. The checklist form must contain a notice to the purchaser, located immediately above the signature lines and in bold print, advising that all cosmetic, superficial or minor matters found during the walk-though should be listed on the form and that the complaint filing period for cosmetic, superficial, or minor matters is one hundred twenty days from either the date of installation of the home or the designated cosmetic complaint date pursuant to A.R.S. § 41-2182. This form must be signed and dated by the purchaser or their representative and by the retailer's or manufacturer's representative. (See example on page #54.) A copy of this form should be given to the purchaser and a copy should be retained by the retailer or

manufacturer. If the purchaser or the purchaser's representative fails or refuses to attend a scheduled walk-though, the retailer or manufacturer shall note the purchaser's failure to attend on the checklist form and proceed with the walk-though. The retailer or manufacturer must send a copy of the completed checklist form by certified mail to the purchaser within five business days after the walk-though date pursuant to A.R.S. § 41-2182.03 (C).

12. Running Gear Buy Back Agreement – This applies to new manufactured homes only. The running gear (wheels and axles) is an integral part of a new manufactured home pursuant to H.U.D. §3282.252. If the purchaser(s) chooses not to keep the running gear, the retailer should execute a Buy Back agreement, separate from the purchase contract, that advises the purchaser(s) that the running gear is an integral part of the home pursuant to the H.U.D. code and should further state that the purchaser has decided to sell the running gear for unit serial number …. to the retailer for the following compensation …. This compensation cannot be a reduction to the purchase price since this would show that the retailer sold an incomplete unit to the purchaser(s). This statement should be signed and dated by the purchaser(s) and a copy should be placed in the sales file. (See example on page #55.)

13. Agency Disclosure – This is for a brokered transaction only. This document specifies the party or parties that the agent is representing in a brokered transaction either as a seller's agent, a purchaser's agent, or a dual agent representing both pursuant to A.A.C. R4-34-101 (C). This document must be in writing. A copy of this document should be given to the party or parties being represented and a copy should be placed in the sales file. (See example on page #56.)

14. Listing Agreement – This is required for a brokered transaction only. A listing agreement must contain the name and address of the seller, a description of the listed unit, the period of time that the agreement is in force (listing agreement must have an ending date), the price the seller is requesting for the unit, the commission to be paid to the retailer/broker, and the signature(s) of the seller(s) and the retailer's/broker's representative who obtains the listing pursuant to A.R.S. § 41-2142 (22). If the commission is stated as any amount over the amount the seller is requesting, this is referred to as a net listing agreement. With this type of listing, the retailer/broker should consider putting a minimum commission statement in the agreement. A minimum commission statement will provide for a commission to the retailer/broker in a net listing agreement regardless of the amount of the offer to purchase accepted by the seller. (Example: Net listing agreement states that seller is to receive $10,000.00. The seller accepts an offer to purchase for $9,000.00. With no minimum commission statement, the retail/broker will receive no commission for this transaction. With a minimum commission statement, the retailer/broker will receive the minimum commission as stated.) If a change is made to a listing agreement, an addendum to the listing agreement must be completed. The addendum to the listing agreement shall reflect the date that the seller signed the addendum to the listing agreement, a description of the change(s) to the original listing agreement, the signature(s) of the seller(s) and the signature of the retailer's/broker's salesperson pursuant to A.A.C. R4-34-303 (F). The salesperson's license number must appear on the addendum along with the dealer's or broker's licensed business name and license number. A copy of the listing agreement and all addendums should be given to the seller(s) and a copy of the listing agreement and all addendums should be placed in each sales file. If a transaction is being co-

brokered, each retailer/broker must provide each other with complete copies of all documents contained in their sales files so that both have a complete record of the co-brokered transaction pursuant to A.A.C. R4-34-301 (D). In a co-brokered transaction, the commission, as stated in the listing agreement, is the maximum commission that is to be charged pursuant to A.A.C. R4-34-303 (E). This commission amount should be divided (however decided by the retailers/brokers) between the retailers/brokers involved in the co-brokered transaction.

15. Offer to Purchase a Listed Unit – This is required for a brokered transaction only. An offer to purchase a listed unit from a prospective purchaser(s) must be made in writing and signed and dated by the prospective purchaser(s). All offers to purchase must be promptly submitted to the seller(s) and signed and dated by the seller(s) to acknowledge receipt of the offer pursuant to A.R.S. § 41-2195 (L). When the offer to purchase is prepared by the retailer's/broker's salesperson, the offer must contain the retailer's/broker's licensed business name pursuant to A.R.S. § 41-2186 (10) and business license number issued by the Department pursuant to A.R.S. § 41-2176 (E), the name of the salesperson(s) involved in the transaction and their salesperson license number(s) issued by the Department pursuant to A.R.S. § 41-2176 (E), the name(s) of the prospective purchaser(s), a description of the unit which includes, if possible, the manufacturer's name, serial number and year of the unit, and the full purchase price being offered. An offer to purchase may serve as the purchase contract if it contains the provisions described in Item #1 of this chapter. Any counteroffers must be made in writing, signed and dated by both the prospective purchaser(s) and seller(s), and contain all the provisions listed above pursuant to A.R.S. § 41-2195 (L). A copy of all offers to purchase and all counteroffers should be given to the person(s) making the offer and to the seller(s) and a copy of all offers to purchase and all counteroffers should be placed in the sales file.

16. Buyer and Seller Closing Statements – This is required for a brokered transaction only. Upon consummation of a brokered transaction, the seller's broker 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). A copy of this document should also be placed in the sales file. Upon consummation of a brokered transaction, the purchaser's broker shall provide the purchaser with a closing statement that includes an accounting of all expenses charged to the purchaser, all pro rations, and all credits pursuant to A.A.C. R4-34-303 (D). A copy of this document should also be placed in the sales file.

17. Trust/Escrow Account Bank Statements – The retailer/broker should have copies of all trust/escrow account bank statements. These bank statements will be needed to determine the date a trust/escrow account withdrawal was made or the date a trust/escrow account check cleared the financial institution.

18. H.U.D. Dispute Resolution Notification Form – Form is required in all sales of new manufactured homes only. (See example on page #57.)

19. Escrow terms or instructions –At a minimum, the escrow terms or instructions shall contain the following information pursuant to A.R.S. § 41-2180 (J):

    - Identification of the escrow agent with information containing at least the name, address and telephone number of the agent.
    - All conditions or requirements that affect or pertain to closing the escrow account and disbursement of the monies in the account.
    - Any conditions or requirements where monies are to be disbursed from the escrow account in advance of the account being closed.
    - Any conditions or requirements where additional monies or documents must be deposited with an escrow agent after the escrow account is closed.

20. Resale under $50,000.00 Notification to Buyer – In used home sales that have a purchase price of under $50,000.00, the dealer or broker must advise the purchaser in writing, before or at the time the purchaser signs the purchase 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.

CHAPTER 5 – ACCEPTABLE EVIDENCE OF CONSUMMATION

The following is a list of documentation a retailer/broker can provide to show that a completed sales transaction has been properly consummated. Evidence of Consummation is referred to in Chapter 4, Item #6, of this handbook. There may be other documentation that a retailer/broker can use to prove proper consummation. If you have questions regarding a type of documentation that does not appear on this list, please contact the Department. One of these documents, showing evidence of consummation, should be placed in each completed sales file.

Retailer/Broker Applying for Transfer of Title or Affidavit of Affixture

1. Application for Title Transfer Date Stamped/Validated by the Department of Transportation/Department of Motor Vehicle - Contact the Department of Motor Vehicle with any questions you may have regarding the issuance of titles and to obtain these forms. When you take the completed form into the Department of Motor Vehicle, along with any other necessary documentation, also take a copy of the application with you. Ask the agent at the Department of Motor Vehicle to date stamp or validate the copy of the application. This is the date of consummation. Place a copy of the MVD date stamped or validated application for title transfer form in the sales file. (See example on page #58.)

2. Certificate of Title – This is issued by the Department of Transportation/Department of Motor Vehicle. A copy of the Certificate of Title issued in the name(s) of the new purchaser(s) should be placed in the sales file. The issuance date on the Certificate of Title is the date of consummation. (See example on page #59.)

3. Department of Transportation/Department of Motor Vehicle Date Stamped/Validated Transmittal Form – This type of form functions like a cover letter to the Department of Motor Vehicle when the retailer/broker is applying for title on behalf of more than one purchaser. The form provides purchaser names, addresses, the unit years, manufacturers, and serial numbers, etc. When you take the transmittal form to the Department of Motor Vehicle, along with any other necessary documentation, also take a copy of the transmittal form with you. Ask the agent at the Department of Motor Vehicle to date stamp or validate the copy of the transmittal form. This is the date of consummation. Place a copy of the date stamped/validated transmittal form in each applicable sales file. (See example on page #60.)

4. Affidavit of Affixture – This form can be obtained from the Department of Motor Vehicle. When you take the Affidavit of Affixture form to the Department of Motor Vehicle, along with any other necessary documentation, take a copy of the Affidavit of Affixture form with you. Ask the agent at the Department of Motor Vehicle to sign and date the copy of the Affidavit of Affixture under the section of the form for Receipt of Surrendered Mobile Home Documents. The date the MVD agent signed the document, as indicated by the date stated on the date line, is the date of consummation. Place a copy of the signed and dated Affidavit of Affixture form in the sales file. (See example on page #61.)

5. Receipt for Certified Mail/Certificate of Mailing – These can be obtained from the U.S. Post Office. If you are mailing applications for title transfer or Affidavits of Affixture to the Department of Transportation, Motor Vehicle Division, complete a receipt for certified mail or certificate of mailing with the name and address of the Department of Motor Vehicle (or other appropriate government agency) that the documents are being mailed to. Identify the name of each purchaser whose application for title transfer or Affidavit of Affixture is contained in that mailing on the receipt for certified mail or certificate of mailing. Ask the agent at the post office to date stamp your portion of the receipt or certificate. This is the date of consummation. Place a copy of the date stamped receipt or certificate of mailing in each applicable sales file. (See example on page #62.)

6. Delivery Documents/Invoice from U.P.S., Federal Express, etc. or Independent Titling Services – Pickup and delivery documents should identify the name and address of the Department of Transportation, Motor Vehicle Division, (or other appropriate government agency), that the documents are being delivered to and the name(s) of each purchaser(s) whose application(s) for title transfer of Affidavit(s) of Affixture is contained in that pickup. Pickup and delivery documents must be signed and dated by the courier. The date that the courier signs the pickup documents is the date of consummation. Place a copy of the signed and dated pickup documents in each applicable sales file along with documentation showing delivery of these documents. (See example on page #63.)

7. Buyer's Acceptance form - This form is to be used for full cash sales only. This form is to be completed by the retailer's/broker's salesperson at the close of the sales transaction. The salesperson who signs the form on behalf of the dealership must be the salesperson who witnessed the buyer signing and dating this form. Only one choice of who is responsible for applying for title transfer or Affidavit of Affixture can be indicated on the form. When the retailer/broker is applying for the title transfer or Affidavit of Affixture, that choice should be marked on the form. At the close of the transaction (after all funds have been received for the transaction and possession of the unit is being given to the purchaser(s)), the form must be signed and dated by the purchaser(s) in the purchaser's own hand. This is the date of consummation provided the form was properly executed. A copy of this form should be placed in the sales file. (See example on page #64.) The retailer/broker must then follow up by obtaining one of the forms of consummation listed in Items #1 through #6 above to prove that the title or Affidavit of Affixture was actually applied for. A copy of this proof should also be placed in the sales file.

8. Residential Factory-Built Buildings Bill of Sale – In some cases, a factory-built building will not have title(s) or a Manufacturer's Statement of Origin (MSO)/Manufacturer's Certificate of Origin (MCO). In these cases only, the Department will accept a copy of a Bill of Sale for the unit to the purchaser(s), which is signed and dated by the retailer or seller(s), if this is a brokered transaction. This document should be dated at the completion of the transaction (after all funds have been received for the transaction and possession of the unit is being given to the purchaser(s)). This document should also contain a statement that the purchaser(s) has received possession of the unit and should be signed and dated by the purchaser(s). This is the date of consummation if the document is properly executed. This document should be given to the purchaser(s) and a copy should be placed in the sales file. (See example on page #65.)

Financial Institution Applying for Transfer of Title or Affidavit of Affixture

Please note that this section applies to bona fide financial institutions only. If the seller is carrying the balance on a transaction or the retailer/broker is carrying the balance on a transaction or a private lending source is carrying the balance on a transaction or another retailer/broker is the seller and is carrying the balance on a transaction, the retailer/broker selling the unit to the purchaser(s) must apply for the title or Affidavit of Affixture in the name of the purchaser(s) and properly secure the lien for the party carrying the balance pursuant to A.A.C. R4-34-303 (G). The retailer/broker must obtain one of the forms of consummation listed above in Items #1 through #6 to prove that the title or Affidavit of Affixture was applied for. A copy of this proof should be placed in the sales file.

1. Finance Contract and Proceeds Disbursement Sheet or Detailed Proceeds Check Stub – These are issued by the financial institution involved in the sales transaction. The finance contract will give the amount financed, the amount of the down payment, the trade-in value, etc. This document should account for the balance of funds on the purchase contract. "Title fees" or "Fees paid to public officials" should appear on this document if the financial institution is responsible for applying for the title transfer or the Affidavit of Affixture. The proceeds disbursement sheet or detailed proceeds check stub will show to whom the financial institution made payments. This will include title fees, payments to a lien holder, flooring company or manufacturer, sales tax paid, amount paid to the retailer/broker and occasionally payments made to the seller(s). The date that the finance contract is funded or cashed, along with evidence of the title fees on either the finance contract or the proceeds documents, is the date of consummation provided the buyer has received his or her home. In addition to the payment of title fees, the proceeds documents show the Department if the retailer/broker is responsible for making any payments out of the proceeds to pay off the unit. A copy of these documents should be placed in the sales file. (See examples on page #66, #67, & #68.) If the retailer/broker has received only the amount due the retailer/broker for commission, this is referred to as net proceeds. If the retailer/broker is given the full or gross proceeds, the Department will require payment information from the retailer's/broker's trust/escrow account or from the retailer's/brokers general account, if the full or gross proceeds were received after the date of consummation, to show that all payments required to be made on the unit have been made. If the title fees have been paid by the financial institution but the finance and proceeds documentation does not show this information, the retailer/broker should obtain a statement from the financial institution that the financial institution was responsible for applying for the title transfer or Affidavit of Affixture. A statement from the financial institution regarding any other payments made by the financial institution such as to pay off the unit, etc. should also be obtained if this information is not on the finance and proceeds documentation. A copy of this statement(s) should be placed in the sales file. If the retailer/broker was not involved in obtaining the financing, often the financial institution will not provide a copy of the finance and proceeds documents to the retailer/broker. In this case, the retailer/broker should obtain a signed statement from the financial institution (on the financial institution's letterhead) that states the date the contract funded or was cashed, the amount financed, if any payments for the transaction were made by the financial institution, and if the financial institution was responsible for applying for title transfer or Affidavit of Affixture. A copy of this statement should be placed in the sales file.

2. Buyer's Acceptance form – This form is to be used when the financial institution involved in the transaction issues a check to the retailer/broker for the full amount of the finance contract thereby making this a full cash to retailer/broker sale; however, the financial institution is still going to apply for the title transfer or Affidavit of Affixture. The retailer/broker is to handle this as a cash sale and deposit the financial institution's proceeds check into the retailer/broker trust account. The Buyer's Acceptance form is to be completed by the retailer's/broker's salesperson at the close of the transaction. The salesperson who signs the form on behalf of the dealership must be the salesperson who witnessed the buyer signing and dating this form. Only one choice of who is responsible for applying for the title transfer or Affidavit of Affixture can be indicated on the form. When the financial institution is applying for the title transfer or the Affidavit of Affixture (on a full cash to retailer/broker sale), that choice should be marked on the form and the name of the lender identified on the accompanying line. At the close of the transaction (after all funds have been received for the transaction and possession of the unit is being given to the purchaser(s)), the form must be signed and dated by the purchaser(s) in the purchaser's own hand. This is the date of consummation provided the form was properly executed. A copy of this form should be placed in the sales file. The retailer/broker must then follow up by obtaining a statement from the financial institution which states that the financial institution is responsible for applying for the title transfer or Affidavit of Affixture and has received the necessary documents from the retailer/broker. A copy of this statement should be placed in the sales file.

Title Company Applying for Transfer of Title or Affidavit of Affixture

Final Settlement Statement and Escrow Instructions – These are issued by the title company involved in the sales transaction. A pre-audit settlement statement is not acceptable since figures and dates will often change. Only the final, dated settlement statement will be accepted by the Department provided the home has been delivered. The final, dated settlement statement should account for the balance of funds on the purchase contract. "Recording fees", "Fees for title transfer or Affidavit of Affixture" or fees paid to an authorized third party ("ATP") that provides services similar to those that are transacted in a Motor Vehicle Division field office should appear on this document if the title company is directly responsible for applying for the title transfer or the Affidavit of Affixture or directly responsible for paying an ATP for these services. The final, dated settlement statement should also show to whom the title company made payments. This will include recording fees, payments to a lien holder, seller, flooring company or manufacturer, tax payments, payments to contractors/installers, titling or Affidavit of Affixture fee to retailer/broker, etc. The settlement date on the final settlement statement, along with evidence of the recording fees, is the date of consummation only if the settlement statement was not done as a "one time closing" or "pre-closing" and only if the title company was directly responsible for applying for title or Affidavit of Affixture or the title company directly paid an ATP for these services. (See example on page #69.) A copy of the escrow instructions and the final, dated settlement statement, along with a copy of your escrow proceeds check, should be placed in the sales file. The one time closing or pre-closing settlement statement is usually done when a construction loan is obtained. In this situation, the final draw paid at the completion of the transaction should be the retailer's/broker's proceeds. The date of the final draw check, if made at the completion of the transaction, along with the escrow instructions and settlement statement, is the date of consummation. A copy of each of these documents should be placed in the sales file.

Construction loans are explained in detail in Chapter 6 of this handbook. If the title company refuses to provide a copy of the final, dated settlement statement, the retailer/broker should obtain a statement from the title company giving the settlement date, the amount received by the title company, any payments for the transaction that were made by the title company, and must state if the title company was responsible for applying for the title transfer or Affidavit of Affixture. A copy of this statement should be placed in the sales file.

NOTES:

- **In all transactions involving a title company, the Department will require the retailer to obtain evidence the title company applied for title or Affidavit of Affixture on behalf of the purchaser if the final, dated settlement statement (also sometimes referred to as a HUD-1) indicates this was the responsibility of the title company, and not an ATP paid by the title company to perform this service. The evidence must be maintained in the retailer's sales file(s).**
- **If the title company is merely cutting the check to the proper government agency for title or Affidavit of Affixture and then giving this check to the retailer/broker so that the retailer/broker can apply for title or Affidavit of Affixture, the settlement date on the final, dated settlement statement will NOT be accepted as the date of consummation. The date of consummation will be the date that the retailer/broker titled the home or filed for Affidavit of Affixture, whichever is applicable, provided the home has been installed or delivered if installation is not part of the agreed on goods and services.**

Purchaser(s) Applying for Transfer of Title or Affidavit of Affixture

Buyer's Acceptance form – This form is to be used for full cash sales only. This form is to be completed by the retailer's/broker's salesperson at the close of the transaction. The salesperson who signs the form on behalf of the dealership must be the salesperson who witnessed the buyer signing and dating this form. Only one choice of who is responsible for applying for the title transfer or Affidavit of Affixture can be indicated on the form. When the purchaser(s) is given the properly signed off title(s) to a used unit or the properly signed off Manufacturer's Statement of Origin (MSO) or Manufacturer's Certificate of Origin (MCO) for a new unit, the applicable statement should be marked on the form to show which occurred. At the point that all funds have been received for the transaction and possession of the unit and properly signed off title(s) or MSO(s)/MCO(s) are given to the purchaser(s), the form must be signed and dated by the purchaser(s) in the purchaser's own hand. This is the date of consummation if the form is properly executed. A copy of this form should be placed in the sales file. In order to give a purchaser(s) "properly signed off title(s) or MSO(s)/MCO(s)", you must provide the purchaser(s) with all necessary notarized signatures on the title(s) or MSO(s)/MCO(s), all necessary lien releases, etc. If the unit was previously on an Affidavit of Affixture, the retailer/broker must first have the unit removed from the Affidavit of Affixture and have the title documents reissued and provide these title documents to the purchaser(s). Questions regarding these procedures should be directed to the Department of Transportation, Motor Vehicle Division.

CHAPTER 6 – ADDITIONAL INFORMATION AND REQUIREMENTS FOR SOME COMMON TYPES OF SALES TRANSACTIONS

Lease with Option to Purchase/Rent to Own

This type of transaction can be done by a licensed retailer only if the retailer owns the unit free and clear. (A broker would not be able to conduct this type of transaction because the D-8B licensee cannot own inventory.) A lease with option to purchase/rent to own transaction which is to be executed between a purchaser(s) and seller(s) cannot involve a license issued by the Department since the licensee will not and cannot be involved in the transaction at the point it would become a sale. If retailer owns the unit free and clear, the sale is subject to all of the following procedures:

1. The contract should show the total purchase price of the unit and should state the dollar amount of the monthly payment, if any, that is to be applied toward the purchase price of the unit should the option to purchase/rent to own option be exercised. A copy of this document should be given to the prospective purchaser(s) and a copy should be placed in the retailer's file.

2. The contract should state the time frame that the prospective purchaser(s) has been given to exercise the option to purchase/rent to own option.

3. Exercising the option to purchase /rent to own option should be in writing, signed and dated by the purchaser. Upon receipt, the retailer's licensed business name, pursuant to A.R.S. § 41-2186 (10), and the retailer's license number issued by the Department, pursuant to A.R.S. § 41-2176 (E), and the salesperson(s) name(s) and salesperson license number(s) issued by the Department, pursuant to A.R.S. § 41-2176 (E), should be written on this document. This document should be signed and dated by the retailer's salesperson. A copy of this document should be given to the purchaser(s) and a copy should be placed in the sales file.

4. The transaction is considered a sale by the Department at the time the option to purchase/rent to own option is exercised. If the option to purchase/rent to own option is exercised upon the signing of the contract, it is considered a sale by the Department at that time.

5. At the time the option to purchase/rent to own option is exercised, all funds previously paid which are to be applied toward the purchase price must be:

   a) Receipted in the retailer's earnest money receipt book pursuant to A.R.S. § 41-2180 (G), deposited to the retailer's trust/escrow account or title company pursuant to A.R.S. § 41-2180 (A), (D) and (H), and held in such account until consummation or title transfer pursuant to A.R.S. § 41-2180 (N) (1) and (2)

   OR

   b) Denoted as a credit toward the purchase price on the purchase contract.

6. Any additional funds paid toward the purchase price prior to consummation or title transfer, pursuant to A.R.S. § 41-2180 (N) (1) and (2), are earnest money pursuant to A.R.S. § 41-2142 (13) and must be handled as described in Item #5a above.

7. The month in which consummation takes place is the month for which the dealer shall report the sale to the Department pursuant to A.R.S. § 41-2187 (E).

Assumptions

In this type of transaction, the unit being sold has an existing loan; however, the loan is assumable. Some assumable loans are no-qualifying loans which means that anyone is able to assume the loan; however, most assumable loans are qualifying loans which requires that the prospective purchaser(s) meet the financial institution's qualifications to assume the existing loan. You must contact the financial institution for this information. In this type of transaction, the financial institution transfers the existing loan amount into the name(s) of the new purchaser(s) and transfers the title(s) to the unit into the name(s) of the new purchaser(s). You will be required to have copies of the assumption documents in your sales file. The assumption documents must show the name(s) of the purchaser(s), the amount of the loan that was assumed, the date of the assumption, and the title recording fees. The date of the assumption, combined with the title recording fees, is the date of consummation of the sale. This is the date that funds can be withdrawn from the trust/escrow account. This type of transaction protects the purchaser(s) and the seller(s) because the loan is transferred out of the seller's name and the unit is titled in the purchaser(s) name.

Wraps

For purposes of this section, a wrap is the sale of a unit with an existing lien on the title for a loan for which the new purchaser(s) cannot qualify. In this type of transaction, the title cannot be transferred out of the previous owner's name into the new purchaser's name due to the existing lien and the loan remains in the name of the seller(s). Retailers/brokers cannot conduct this type of transaction because the title cannot be transferred; therefore, the sale cannot be consummated and funds cannot be released from the trust/escrow account or title company. This type of transaction leaves both the purchaser(s) and the seller(s) unprotected. The purchaser(s) has no title to prove ownership of the unit and the seller(s) is still responsible for the loan. Conducting this type of transaction can result in an administrative action against your license. This type of transaction is sometimes referred to as an assumption or a lease with option to purchase/rent to own transaction. A wrap is neither an assumption nor a lease with option to purchase/rent to own transaction. Assumptions and lease with option to purchase/rent to own transactions are very specific transactions and are explained above, in detail, in this Chapter.

Consignments

Consignments are not currently defined by the Department's statutes. At this time, a retailer/broker who sells a unit on consignment should treat the sale as a brokered transaction. The transaction should meet all requirements described in Chapter 4 of this handbook, including a listing agreement and an offer(s) to purchase.

Retailer or Seller or Private Lender Carry Transactions

1. The transaction should meet all requirements described in Chapter 4 of this handbook.

2. The retailer/broker should have a copy of the security agreement/finance contract between the retailer and the purchaser(s) or the seller/private lender and the purchaser(s). This document will account for the balance of funds on the purchase contract. A copy of the security agreement/finance contract should be given to the purchaser and the lien holder (retailer, seller or private lender) and a copy should be placed in the sales file.

3. The retailer/broker must apply for the title transfer in the name of the purchaser(s), with a lien for the lien holder. Follow the consummation procedures described in Chapter 5 of this handbook.

Construction Loans/Stage Funding

These types of loans are designed to provide stage payments from the construction loan financial institution for the purpose of making certain payments during the course of the transaction. The financial lending institution may make payments directly to the financial institution flooring the unit or to the lien holder on the unit, to the land owner or land lien holder, to the applicable installers/contractors, etc. The construction lender may make these payments to the title company involved in the transaction and the title company can make these payments directly to the applicable parties as listed above. These checks must be made payable to the above listed parties alone. If the retailer's name appears on these checks, as one of the payees, the funds are considered earnest money pursuant to A.R.S. § 41-2142 (13) and must be deposited to the trust/escrow account or title company and held there until the sale is consummated. Any funds received by the retailer prior to consummation must be treated as earnest money. Please refer to Chapter 4 and 5 of this handbook regarding earnest money requirements and consummation of a transaction involving a construction loan.

A "one time closing" or "pre-closing" settlement statement is usually done when a construction loan is obtained. In this situation, the final draw, paid at the completion of the transaction, should be the retailer's/broker's proceeds provided the home has been installed or delivered if installation is not part of the agreed on goods and services. The date of the final draw check, if made at the completion of the transaction, along with the escrow instructions and settlement statement showing recording fees for the title transfer or Affidavit of Affixture, is the date of consummation. A copy of each of these documents should be placed in the sales file. Construction loans are explained in detail in Chapter 6 of this handbook.

NOTE: In all transactions involving a title company, the Department will require the retailer to obtain evidence the title company applied for title or Affidavit of Affixture on behalf of the purchaser if the final, dated settlement statement (also sometimes referred to as a HUD-1) indicates this was the responsibility of the title company, and not an ATP paid by the title company to perform this service. The evidence must be maintained in the retailer's sales file(s).

Cash Transactions

All funds received in a cash transaction, prior to the date of consummation or on the same day the sale is consummated, are considered earnest money pursuant to A.R.S. § 41-2142 (13). These funds must be receipted and deposited in the trust/escrow account or title company, as described in Chapter 4 of this handbook, even if the consummation/title transfer is done the same day the funds are received. Once the consummation/title transfer is done, the funds can be withdrawn from the trust/escrow account or title company. If the funds are deposited the same day the transaction is consummated, the funds can also be withdrawn from the trust/escrow account or title company on the same day.

CHAPTER 7 – WHAT TO EXPECT WHEN AN AUDIT IS CONDUCTED

1. Each licensed retailer/broker of mobile homes, manufactured homes, or residential factory-built buildings must be audited at least once every two years pursuant to A.R.S. § 41-2180 (D).

2. If a retailer/broker has had no sales or no sales subject to audit, the Department will send a letter asking for confirmation that no sales or no sales subject to audit have taken place during the prescribed time period stated in the letter. You will also be asked to sign and return a new Trust Account Authorization and Release of Information letter with your original, notarized signature on it or that of a signer on the account. If you have a trust/escrow account along with or instead of a title company, you will also be asked to provide a copy of the front and back of your trust or escrow account signature card (if applicable) or account application, a copy of the last received trust or escrow account bank statement, and a statement or printout from your bank indicating the current balance in the trust or escrow account as of the date you prepare to mail these documents to the Department. If no sales have been consummated but there has been activity in the trust or escrow account between the receipt of the Department's letter and the date you prepare to send documents to the Department, you must furnish the Department with a bank printout showing the current balance in the trust or escrow account. In addition, you must provide the Department with a breakdown of the trust or escrow account balance by name(s) of the purchaser(s) and the deposit amounts for each purchaser that are pending in the trust or escrow account. You will be requested to provide copies of all applicable earnest monies receipts and copies of all applicable bank validated deposit slips that relate to the trust or escrow account balance. In addition, you must be able to identify what amount of the balance is retailer/broker monies if applicable. Once we have received this information, and provided everything is in order, we will consider this your audit for the two-year period stated in the letter.

3. If a retailer/broker has had sales, the Department will, in most cases, conduct the audit by mail. This audit will include a random sample of all reported sales from all licensed locations of the retailer/broker. The Department's letter will identify the sales that are to be audited and will provide the retailer/broker with a detailed list of all documentation that the retailer/broker is to provide to the Department. The retailer/broker will be requested to provide the Department with copies of the requested documentation. The copies will be shredded at the completion of the audit, provided there are no outstanding matters from the audit.

4. The auditor will review the records and record information on audit work sheets.

5. The retailer/broker is sent an audit report at the completion of the audit. The audit report will advise the retailer/broker of any violations of statutes, rules, or substantive policies cited by the auditor and, if applicable, provide the retailer/broker with direction on how to correct the cited violations and/or request the retailer/broker to provide additional documentation. The audit report will advise the retailer/broker of the date that the additional documentation and/or corrective documentation are due in the Department.

6. If you disagree with a cited violation, you should feel free to write the auditor and explain your reason for disagreeing with the violation. Provide all documents, (that may not have been originally sent to the auditor), to support your position.

7. You will be required to provide evidence of the trust or escrow balance as of the date you prepare to send the requested documentation to the Department. This will consist of a printout or statement from the bank (on the bank's letterhead) indicating the balance in the trust or escrow account as of the date you prepare to mail documents to the Department, your breakdown of this balance per your ledger which must identify all pending sales transactions by customer name and deposit amount per customer, all outstanding check numbers and check amounts, and the amount of monies, if any, that the retailer/broker has in the account to offset service charges assessed by the financial institution. In addition, you will be required to provide copies of all earnest monies receipts and the correlating bank validated deposit slips for those earnest monies that make up the trust or escrow account balance.

8. Please note, if you have met one of the requirements listed in Chapter 3 of this handbook, which would allow you to have more than one trust/escrow account, you will be required to keep a separate ledger for each of the trust/escrow accounts. You will be required to provide evidence of the trust or escrow balances, as of the date you prepare to send the requested documentation to the Department, for each trust or escrow account. This will consist of printouts or statements from the banks (on bank letterhead) indicating the balance in each of the trust or escrow accounts as of the date you prepare to mail documents to the Department, your breakdown of these balances per your ledgers which must identify all pending sales transactions by customer name and deposit amount per customer, all outstanding check numbers and check amounts, and the amount of monies, if any, that the retailer/broker has in each of the accounts to offset service charges assessed by the financial institution. In addition, you will be required to provide copies of all earnest monies receipts and the correlating bank validated deposit slips for those earnest monies that make up the trust or escrow account balances.

CHAPTER 8 – FREQUENTLY ASKED QUESTIONS

SALES REPORTS

1. How do I report sales to the Department and when is the sales report due?

ANSWER: Pursuant to A.R.S. § 41-2187 and A.R.S. § 41-2189, sales reports must be filed with the Department by the fifteen day of each month. You will report all consummated sales for the entire preceding month (i.e. January's sales activity report is due by February 15th.). Complete the retailer/broker required information on the Homeowner Information Bulletin and have the purchaser sign the form for each sale. Print the purchaser's name on the form. Be sure to use the "used" Homeowner Information Bulletin for used units and the "new" Homeowner Information Bulletin for new units. Check the proper box at the bottom of the "used" Homeowner Information Bulletin to indicate if recovery fund fee is owed for the reported sale(s). You must also submit the Consumer Recovery Fund assessment fee, if required, for each reported sale in the form of one check, for the total amount owed, made payable to the Office of Manufactured Housing. Your check for the owed recovery fund assessment fees must accompany your sales report. The Consumer Recovery Fund assessment fees **cannot** be paid from your trust/escrow account.

2. Do I have to file a sales report if I have had no sales?

ANSWER: If you have not consummated any sales for a given month, you must still send in a report stating your licensed business name, your license number, the month/year you are reporting for, and stating that you have no sales for the stated month/year.

3. What should I do if the purchaser refuses to sign the Homeowner Information Bulletin?

ANSWER: If a purchaser refuses to sign the Homeowner Information Bulletin, identify the name of the purchaser on the purchaser signature line. Note on the purchaser signature line that the purchaser has refused to sign the Homeowner Information Bulletin and submit the Homeowner Information Bulletin to the Department with the dealer required information completed on the form. You will report all sales made to purchasers of mobile homes, manufactured homes and residential factory-built buildings, regardless of whether the units were new or used, brokered sales, sales of repossessed units, sales of retailer-owned inventory, sales of factory-ordered units, sales of floored units, etc.

4. Where do I obtain Homeowner Information Bulletins?

ANSWER: Download/print out Homeowner Information Bulletins from the Department's website of www.azhousing.gov . The Homeowner Information Bulletins are located under "Sales Reports". The link is https://housing.az.gov/general-public/manufactured-housing/licensing

5. Can I fax or email my sales report to the Department?

ANSWER: You may fax your sales report to (602) 364-1052 or email your sales report to donna.grant@azhousing.gov . If reporting no sales for a given reporting period, ensure that you identify your licensed business name, license number, and the month/year you are reporting no sales for. If reporting sales, identify your licensed business name, license number, month/year you are reporting sales for, total number of sales being reported and the names of the purchasers. Attach scanned copies of the completed Homeowner Information Bulletins to your email or fax copies of the completed Homeowner Information Bulletins with your cover letter to the Department.

6. If I have faxed or emailed copies of the Homeowner Information Bulletins to the Department, do I also have to mail Homeowner Information Bulletins to the Department?

ANSWER: No, but you must provide us with payment for the total amount of recovery fund assessment fees owed for the reported sales if recovery fund assessment fee is required.

7. When sending Homeowner Information Bulletins to the Department, can I send copies or must they be the originals?

ANSWER: Copies are acceptable.

8. I am going on vacation and will be closing my office for a period of time. What do I do about sales reports?

ANSWER: If you know that you will not be conducting business for a period of time, you must send a statement to the Department which identifies your licensed business name, license number and the time period that you will have no sales activity.

9. I am interested in the sales reports of another retailer/broker. Is it possible to see another dealer's sales reports?

ANSWER: Yes, sales report files are public record. You must contact the Department's Investigation Section to schedule an appointment to view the sales file(s) of any retailer/broker. You will be asked to provide a letter, signed by you, stating the name(s) of the retailer(s)/broker(s) whose files you wish to review. This letter will be place in the reviewed file(s) as the retailer/broker has the right to know who has reviewed his/her sales file(s).

10. My former employee stole my sales files and I need to report these sales to the Department. What should I do?

ANSWER: Review your trust account balance sheet or client ledger in order to determine the name(s) of the purchaser(s) whose transaction(s) closed during the reporting month. Compose a letter identifying your licensed business name, license number and states the name(s) of the purchaser(s). Further, state that the sales files have been taken and identify the name of the person(s) responsible. Complete the retailer/broker required information on the appropriate Homeowner Information Bulletin(s). Note the name of the purchaser(s) on the purchaser signature line(s). Send the letter and the Homeowner Information Bulletin(s) to the Department. We will allow you time to contact each purchaser in order to have him/her sign the Homeowner Information Bulletin(s). Submit the signed Homeowner Information Bulletin(s) to the Department as it/they are received. Make copies of the signed form(s) for your records. Provide us with the required recovery fund assessment fees. Please note that the Department has no statutory authority to prosecute the employee that allegedly stole your sales records. Report this theft to the appropriate police department. Supply the Department with a copy of the police report.

11. I co-brokered a sale with another licensed retailer/broker. Who is responsible for reporting the sale to the Department?

ANSWER: The purchaser's retailer/broker is responsible for reporting the sale to the Department and for paying the recovery fund assessment fee to the Department, if applicable.

12. I sold a unit to another licensed retailer. Do I report this sale to the Department?

ANSWER: No, you do not report licensed retailer to licensed retailer sales to the Department.

13. The unit that I sold is being delivered to another state or country. Do I report this sale to the Department?

ANSWER: Yes, any sale made as a licensee must be reported to the Department regardless of the delivery destination.

14. I know I have to file a sales report with the County Assessor and Department of Revenue. Can their report forms be obtained from the Department?

ANSWER: No, contact the Department of Revenue to obtain their report form. It may be possible to use one form for both the Department of Revenue and County Assessor. Any questions regarding reporting to these agencies should be directed to them.

15. Do I have to supply the Department with a copy of the report form that I mail to the Department of Revenue or County Assessor?

ANSWER: No, you do not need to supply the Department with a copy of the report form sent to the Department of Revenue or County Assessor.

16. I have licensed branches. Should each of my licensed locations send a sales report to the Department?

ANSWER: Only one sales report should be sent to the Department for all licensed locations under the retailer/broker license. Instruct your licensed branches to forward copies of all Homeowner Information Bulletins to your headquarters. The headquarters will report all sales activity to the Department.

17. I failed to report all of my sales to the Department. How do I amend my previous sales report?

ANSWER: Send a letter to the Department that identifies your licensed business name, license number, and the sales report that you wish to amend. Attach the Homeowner Information Bulletins to this letter and any recovery fund assessment fees owed for these sales.

18. There is a line on the Homeowner Information Bulletin for recording the purchase date. Should I enter the purchase date that is on the purchase contract/offer to purchase or should I enter the date that the sales transaction was consummated?

ANSWER: Either date is acceptable.

TRUST/ESCROW ACCOUNTS

1. The financial institution where I opened my trust account, or escrow account, has been purchased by another financial institution or renamed. Do I have to notify the Department of this fact?

ANSWER: Yes, notify the Department of any changes to your trust account or escrow account. We will supply you with two (s) new Trust or Escrow Account and Authorization for Release of Information forms which must be completed and returned to the Department. You will provide your financial institution with an originally completed, signed and notarized form and you must provide the Department with an originally completed, signed and notarized form. We will not accept a copy. You will also be required to provide the Department with a copy of the new trust or escrow account signature card or account application from the new bank if applicable.

2. I recently changed my licensed business name. Are there any changes that must be made to my trust or escrow account signature card or account application?

ANSWER: The account name or account title on the trust account or escrow account signature card, or trust account or escrow account application, must agree with your licensed business name. If the licensed business name has a “doing business as” name, the “doing business as” name does not have to appear as part of the account name or account title. Direct the financial institution to make any necessary changes to your trust account or escrow account signature card or trust account or escrow account application. You must complete a new Trust or Escrow Account and Authorization for Release of Information forms as described in the answer to question 1 above. In addition, you must supply the Department with a copy of the corrected trust account or

escrow account signature card or trust account or escrow account application, from the financial institution, which shows the account name or account title has been corrected.

3. I am going to change my trust account or escrow account to another financial institution. What do I need to provide to the Department?

ANSWER: Provide the Department with a completed, originally signed, and notarized Trust or Escrow Authorization and Release of Information form and provide Department with a copy of the trust or escrow signature card or account application for the new trust or escrow account. You must make a lump deposit of all funds for pending transactions from the previous trust or escrow account to the new trust or escrow account. As soon as all outstanding checks, etc. clear the previous trust or escrow account, you must close that account and provide the Department with proof that the account was closed. Provide the Department with a copy of a letter from the financial institution that identifies the previous account number and the date that account was closed. A bank statement showing a zero balance will not be sufficient because an account can remain open with a zero balance. If you are changing title companies, you need only provide the Department with an originally completed, signed, and notarized Trust or Escrow Authorization and Release of Information form. (See example on page #70.)

4. I am canceling my retailer/broker license and am going to be transferring my pending deals to another licensed retailer/broker. How do I do this?

ANSWER: Signed and dated statements from these purchasers must be obtained to prove that the purchasers are agreeable to their transactions being completed by the other retailer/broker and the new retailer/broker should execute new purchase contracts/offers to purchase with these purchasers. The retailer/broker should refund earnest monies to those purchasers that do not wish to allow their sales transactions to be completed by the other retailer/broker. Copies of the signed and dated statements, as well as copies of any refund checks, should be sent to the Department. Provide the Department with a list which identifies the names of the purchasers and their individual deposit amounts that are going to be transferred from your trust account or escrow account into the other retailer's/broker's trust account or escrow account. Provide the Department with a copy of the check written from your trust account or escrow account to the other retailer's/broker's trust account or escrow account. In addition, provide the Department with a copy of the validated trust account or escrow account deposit slip from the retailer/broker that has received these earnest monies from you. The retailer/broker that consummates the sales transactions is responsible for reporting the sales to the Department and paying any applicable recovery fund assessment fees.

5. Due to my dealership's sales volume, the amount of money held in my trust account or escrow account is always over $250,000.00. Since the FDIC will only insure an account up to $250,000.00, I am afraid to jeopardize a purchaser's funds by depositing the funds in my trust account or escrow account when the balance is over the $250,000.00 insured limit. Should I open an additional trust or escrow account?

ANSWER: No, you may not open additional trust or escrow accounts. According to the FDIC, (FDIC Rules and Regulations 12 C.F.R. 330.6) a retailer/broker is viewed as an agent. The purchaser is viewed as a principal because he/she "owns" the deposited money until the sale is consummated or withdrawn. Funds, held for each purchaser in the trust or escrow account, are added together with any other funds the purchaser holds in the same name in the same financial institution and insured up to $250,000.00. Therefore, each purchaser is insured by the FDIC, in each financial institution, up to $250,000.00.

6. Can I open a savings trust/escrow account?

ANSWER: Yes, the Department has no regulation prohibiting a savings trust account or escrow account as long as you maintain no more than $200.00 of your own money in this account.

7. A.R.S. § 41-2180 (O) states that, upon consummation, I am to pay the seller from my trust or escrow account; however, the seller wants certified funds. How do I handle this?

ANSWER: Your ledger will show the check number you used to purchase the certified check from the financial institution. A copy of the certified check will be maintained in the sales file. Both checks will be recorded during an audit.

SALES AND RENTING OF MOBILE HOMES, MANUFACTURED HOMES AND FACTORY-BUILT BUILDINGS

1. How many mobile homes, manufactured homes or factory-built buildings can I sell in a year without having the appropriate license with the Department?

ANSWER: A purchaser may sell up to two of the above listed units in a twelve-month period. You must have obtained the unit for a **purpose other than resale** (i.e. to live in, to rent, etc.). You may not sell any units that were obtained for the purpose of resale without having the proper dealer license with the Department. You may not sell a unit on behalf of another without having the proper license with the Department.

2. I am only renting mobile homes, manufactured homes or factory-built buildings. Do I have to be licensed with the Department?

ANSWER: No, the Department does not have jurisdiction over the rental of mobile homes, manufactured homes or factory-built buildings,**if** the renter does **not** acquire ownership of the unit. A person would have to obtain a retailer license if they were involved in "rent to own" sales transactions. All applicable trust/escrow account requirements must be followed. Please see Chapter 6 of this handbook.

SALES RECORDS

1. I received a letter requesting an audit but cannot comply with the due date specified in the Department's letter. What do I do?

ANSWER: Contact the Department's auditor to request an extension and state the reason that the extension is needed. The auditor will determine whether or not to grant the extension.

2. I kept my files for a period of three years as required by A.R.S. § 41-2180 (P). Can I destroy these files now?

ANSWER: Although the Department's statute requires that you keep records for only a period of three years, other agencies such as the Department of Revenue, the Internal Revenue Service, the County Assessor's Office, etc. may have other requirements. We recommend that you check with these agencies, and possibly legal counsel, before destroying any records.

SALESPERSONS

1. I have terminated the employment of a salesperson. Should I notify the Department of this fact?

ANSWER: A retailer/broker is not required to notify the Department of the termination of a salesperson's employment pursuant to current statutes; however, such notification would be appreciated by the Department. Your written notification should include the name of the salesperson, salesperson license number if known, and state the date that the salesperson was terminated or left your employ. This information should be sent to the Licensing Section.

2. A salesperson left his salesperson's license certificate behind when he left my employ. What should I do with this salesperson's license certificate?

ANSWER: Return the salesperson's license certificate to the Department along with a letter that indicates when the salesperson left your employ. If the salesperson comes back to your office to claim his or her license certificate prior to this, give the salesperson his or her license and notify the Department in writing that the salesperson is no longer in your employ.

3. A salesperson is leaving my employ and wants to take his salesperson's license certificate with him. I paid for this salesperson's license. Shouldn't I keep the license certificate or return the license certificate to the Department?

ANSWER: The salesperson's license certificate is the property of the salesperson. You may not withhold the license certificate from the salesperson.

4. I have hired a new salesperson. He has applied for his license, but it has not been issued yet. Can he start selling mobile homes, manufactured homes or residential factory-built buildings for my dealership?

ANSWER: No, the salesperson cannot start selling for your dealership until his/her salesperson license has been issued. An applicant may not act as a licensee between the filing of the application and actual issuance of the license pursuant to A.R.S. § 41-2175 (F). A retailer/broker that allows an unlicensed salesperson to act in the capacity of a salesperson, prior to the license being issued, may be cited for aiding and abetting an unlicensed person to evade the provisions of the statutes.

5. Can I be the Qualifying Party for a retailer/broker license and, at the same time, be a licensed salesperson for another dealership?

ANSWER: Yes, a Qualifying Party of a retailer/broker license may apply for and be issued a salesperson's license to work for another licensed retailer/broker.

6. Who is exempt from needing a salesperson's license?

ANSWER:

- If license is issued to an individual: The individual and the Qualifying Party do not need salesperson licenses.
- If license is issued to a partnership: The partners and the Qualifying Party do not need salesperson licenses.
- If license is issued to an LLC or to a corporation: The Qualifying Party does not need a salesperson license.

7. Two salespersons were involved in the sale of a unit. Must both salespersons be identified on the purchase contract/offer to purchase?

ANSWER: Yes, the purchase contract/offer to purchase must identify all salespersons involved in the sale. Each of their names and individual salesperson license numbers (issued by the Department) must be noted on the purchase contract/offer to purchase.

8. Can a salesperson work for more than one licensed retailer/broker at a time?

ANSWER: No, the salesperson's license application must designate one employing retailer/broker and the location where the license certificate will be posted.

9. Are salespersons independent contractors?

ANSWER: No, salespersons are employees of a licensed retailer/broker. A salesperson must be acting on behalf of their employing retailer/broker. Pursuant to A.R.S. § 41-2142 (28), the Qualifying Party has active and direct supervision of and responsibility for all operations of the licensed business. This includes the actions of his salespersons.

LICENSE SCOPES

1. I have a retailer's license with the Department. A purchaser is trading in his fith wheel, travel trailer, car, park trailer, mobile home, manufactured home or factory-built building towards the purchase of a mobile home or manufactured home or factory-built building. Can I sell the trade-in under my license?

ANSWER: You may only sell that trade-in that is within the scope of your license to sell to a purchaser. If you have the proper license with the Department to sell mobile homes, manufactured homes, commercial factory-built buildings or residential factory-built buildings, you may sell these units when taken on trade. If you do not have the proper license, you may wholesale, sell, list or consign the trade-in only to a properly licensed retailer/broker. A broker (D-8B classification) licensed by this Department cannot take these units in on trade since a broker cannot own inventory. Travel trailers, cars, 5th wheels, and motor homes are under the jurisdiction of the Department of Transportation and cannot be sold with a license issued by this Department. You must contact the Department of Transportation regarding their requirements and regulations. The Department of Fire, Building and Fire Safety does not license retailers/brokers of park trailers (park models).

EARNEST MONEY RECEIPT BOOK

1. My earnest money receipt book has been completed. I cannot find a receipt book that starts with the next sequential number. Is this a problem?

ANSWER: No, you may purchase an earnest money receipt book that has a different number series. The receipt book must be at the minimum in duplicate and consecutively numbered pursuant to A.R.S. § 41-2180 (G).

2. A purchaser brought me a down payment on October 21st; however, his down payment check is dated October 28th. What date should be reflected on the earnest money receipt?

ANWER: You are to receipt all earnest monies on the date that you receive the funds; therefore, the receipt date should be shown as October 21st in the above instance. All earnest monies are to be deposited in the trust account or escrow account no later than the close of the second banking business day after receipt pursuant to A.R.S. § 41-2180 (H).

3. I received a down payment check from a purchaser. This check is from someone other than the purchaser (such as another family member). What name should be shown on the earnest money receipt?

ANSWER: You may show the name of the family member, etc. and show the purchaser's name in parentheses or in the memo area on the receipt or you may show the purchaser's name and the family member's name in parentheses or in the memo area on the receipt pursuant to A.R.S. § 41-2180 (M) (2).

4. The purchaser arranged his own loan from a financial institution for the unpaid balance of the purchase contract/offer to purchase. The financial institution funded the loan proceeds to my dealership. Should I receipt these monies? If so, what name should be shown on the earnest money receipt?

ANSWER: These monies should be receipted in your earnest money receipt book. The receipt should show the name of the financial institution and the name of the purchaser in parentheses. "Earnest monies" means all monies given by a purchaser or a financial institution to a retailer/broker before consummation of the sale pursuant to A.R.S. § 41-2142 (13). The receipt date will enable the auditor to determine whether or not the monies were received after the transaction was consummated and enable us to determine whether or not the monies should have been deposited into the trust or escrow account. The amount of monies received will also enable auditor to determine whether or not the retailer/broker was responsible for paying a manufacturer, a flooring source, a seller, a lien holder, etc.

5. Do I need to write a receipt in my earnest money receipt book for funds that a purchaser wire transfers into my trust or escrow account?

ANSWER: No. Your dealership did not take physical possession of the funds. Place evidence that the money was a wire transfer in the sales file since you will not have a deposit slip for this amount.

CONSUMER RECOVERY FUND

1. How long does a consumer have to file an application for payment from the Consumer Recovery Fund?

ANSWER: The consumer may file an application for payment from the Consumer Recovery Fund no later than two years from the date of sale or date of installation, whichever is later, pursuant to A.R.S. § 41-2190 (J).

2. What happens if my dealership loses a recovery fund case?

ANSWER: Your license is suspended until you repay the Consumer Recovery Fund for the amount of the award plus interest.

3. Are investors, contractors/installers or retailers/brokers protected by the Consumer Recovery Fund?

ANSWER: No, the Consumer Recovery Fund is limited to sellers and/or purchasers that have been damaged by the acts or omissions of a licensed retailer/broker. A seller, pursuant to A.R.S. § 41-2142 (32), means a natural person who enters into a listing agreement with a licensed retailer/broker for the purpose of resale. A purchaser, pursuant to A.R.S. § 41-2142 (27), means a person purchasing a unit in good faith from a licensed retailer/broker for **purposes other than resale**.

4. How do I know whether or not I should be paying monies into the Consumer Recovery Fund?

ANSWER: Refer to “Sales Reports” on our website. Recovery fund fee is not owed on new home sales that go through a title company and is not owed on used home sales that have a purchase price of $50,000.00 or more that went through a title company.

5. Is there a cap on the recovery fund assessment fee?

ANSWER: The recovery fund assessment fee cannot exceed fifty dollars pursuant to A.R.S. § 41-2189 (A).

UNLICENSED ACTIVITY

1. Can my dealership use the services of an unlicensed installer/contractor?

ANSWER: No. The dealer must contract with properly licensed installers or properly licensed contractors.

2. What do I do if I discover that I used an unlicensed installer/contractor? What administrative action can be taken against my license?

ANSWER: Report the use of the unlicensed installer/contractor to the Investigations Section of the Department. Administrative action may take the form of a letter of concern or a Citation and Complaint.

3. What steps can I take to ensure that I do not hire an unlicensed installer or contractor again?

ANSWER: We suggest that you obtain a copy of each installer's/contractor's license certificate before hiring them to perform work and check with the agency that issued the license to determine what work that license scope can perform. Please be aware that the Department does not have a handyman law for any work within the Department's jurisdiction; however, the Registrar of Contractors does have a handyman law which allows certain work to be performed without a license. Please contact the Registrar of Contractors for information regarding this law.

4. I believe that a person/company is acting as a retailer/broker, salesperson, installer, or manufacturer without having a license. What should I do?

ANSWER: Report this matter to the Investigation Section of the Department. You may inform the Department of this in writing or by phone call. Include as much information as possible such as the name of the individual or company, the individual's/company's address and phone number, address/location where you have seen "for sale" signs, advertisements or work being performed and any other information to explain why you believe this person/company is acting as a licensee.

5. Does a person have to be licensed by the Department as a retailer/broker or licensed as a salesperson, acting on behalf of a licensed retailer/broker, in order to show a mobile home, manufactured home, residential or commercial factory-built building to a prospective purchaser?

ANSWER: The **showing** of a unit does not constitute retailer/broker or salesperson activity. A retailer's/broker's or salesperson's license would be required if the person quotes a purchase price and/or otherwise attempts to negotiate the sale of the unit, pursuant to A.R.S. § 41-2142 (5), (9), (31).

BROKERED TRANSACTIONS

1. I listed a mobile/manufactured home or residential factory-built building for $20,000.00. A prospective purchaser has offered to purchase the unit for a lesser amount. Do I have to present this offer to the seller?

ANSWER: Yes, a licensee who has agreed to act as an agent shall promptly submit all offers to purchase the listed unit from any source to the seller pursuant to A.R.S. § 41-2195 (L).

2. I listed a mobile/manufactured home or residential factory-built building for $25,000.00 net to seller with a $3,000.00 minimum commission due to my dealership. I have a purchaser who wants to buy the unit for $25,500.00. The purchaser has signed an offer to purchase for this amount. Should I go back to the seller and have the seller sign a new listing agreement or addendum for a lower amount?

ANSWER: No. The retailer's/broker's listing agreement has already informed the seller of the minimum commission to be paid to the dealership should there be a sale. The seller's acceptance of an offer for a lesser amount indicates that the seller has agreed to accept a lesser net amount.

3. I listed a mobile/manufactured home or residential factory-built building. A purchaser has signed an offer to purchase for this unit. I have not presented the offer to purchase to the seller yet. I want to buy this unit from the seller and sell it to the purchaser with my dealership acting as the seller. Can I do this?

ANSWER: No, this would be a violation of A.R.S. § 41-2195 (L) for failure to present all offers to the seller and A.R.S. § 41-2186 (14) for false, misleading or deceptive sales practices in the sale or offer of sale of the listed unit.

4. I have received an offer to purchase from a prospective purchaser(s) on a mobile home, manufactured home or residential factory built building I have listed. One of the terms in the offer to purchase is that certain repairs have to be made by the seller and/or that the seller is to carry the unpaid balance, etc. The prospective purchaser(s) will not negotiate this item(s). I have presented this offer to the seller(s) but the seller(s) will not accept the offer because he refuses to make the repairs and/or carry the unpaid balance, etc. As a licensed retailer, I am willing to purchase the listed unit from the seller(s) and have the repairs made and/or carry the unpaid balance for the purchaser(s), etc. Can I purchase this unit from the seller(s)?

ANSWER: Yes, you may offer to purchase the listed unit from the seller. The offer to purchase from the prospective purchaser must first be submitted to the seller(s) in writing. The offer must be signed and dated by the prospective purchaser(s) with the terms and conditions listed on the offer. Then, if the offer is refused by the seller, the seller must then mark the offer refused and sign and date next to the refusal. The retailer must keep this in the sales file. The retailer could then write an offer to purchase the unit from his dealership. This offer must be signed and dated by the retailer and state that the seller(s) is unwilling to make the repairs and/or carry the unpaid balance, etc., as requested by the prospective purchaser(s), but is willing to allow the retailer to purchase the unit and sell the unit to the prospective purchaser(s). This offer must be signed and dated by the seller and a copy should be placed in the retailer's sales file. The check to pay for this unit cannot be made from the earnest money in the trust or escrow account. The retailer must purchase the unit using the retailer's own monies to do so. A licensed broker cannot purchase a unit because the broker cannot own inventory; therefore, a D-8B licensee would not be able to purchase this or any other unit.

5. An offer to purchase has been made on a listed mobile/manufactured home or residential factory-built building. The unit is owned by a seller who is out of the area. Can I present the offer to purchase by phone?

ANSWER: All offers must be presented in writing pursuant to A.R.S. § 41-2195 (L). If the offer is presented by phone, it must be followed up in writing by mailing, or faxing, or emailing a scanned copy of the offer to purchase to the seller for the seller to sign and date his/her signature. The seller should be instructed to return the signed and dated offer to purchase to the retailer/broker. A copy of the signed and dated offer to purchase must be maintained as part of the record of sale pursuant to A.R.S. § 41-2195 (L).

6. The seller is out of the area and has given me or another individual power of attorney to sign all documents that relate to the sale of his mobile/manufactured home or residential factory-built building. Can whoever is indicated on the power of attorney sign the listing agreement and offer to purchase on behalf of the seller?

ANSWER: You should consult with an attorney for legal advice regarding contract law.

7. Am I required to obtain a listing agreement if I'm selling a financial institution's repossession? Do I have to have the financial institution sign and date the offer(s) to purchase?

ANSWER: No, you may place a copy of the financial institution's repossession list in the sales file instead of a listing agreement. Currently, the Department does not require that you obtain a signature and date on an offer(s) to purchase from the financial institution when selling their repossessed units.

8. Am I required to have a listing agreement if I'm selling a unit for another licensed retailer? Do I have to have the licensed retailer sign and date the offer(s) to purchase?

ANSWER: Yes, you must treat this sale as you would any brokered transaction. Also, remember that your dealership is responsible for having acceptable proof of consummation. You cannot allow the other retailer to file for the title transfer or Affidavit of Affixture.

9. The seller has elected to carry back or finance the unpaid balance reflected on the Offer to Purchase/purchase contract. Do I have to maintain evidence of this in my files?

ANSWER: Yes, you must maintain evidence that the unpaid portion of the purchase price is being financed or carried back by the seller. This evidence can be in the form of a promissory note between the purchaser and the seller. Please note that you **must** maintain evidence that the title has been transferred into the name(s) of the purchaser(s) and that the lien holder's position has been secured on the title. This is required by Rule R4-34-303 (G).

10. The purchaser reflected on the purchase contract/Offer to Purchase is buying the unit for another person. The purchaser would like the title to be transferred into the name of this other person. What documentation should I have in my file to explain why this occurred?

ANSWER: Your file should contain a statement, signed and dated by the purchaser, which indicates that the purchaser has requested the retailer/broker to transfer the title into the name of this other person. The other person must be identified by name on this statement.

LICENSING

1. I placed my license on inactive status almost two years ago. Can I reactivate my license?

ANSWER: Yes, the license can be reactivated within two years from the date that inactive status was granted by the Department. If the license is not reactivated within two years, a new application for license must be made and a new license issued pursuant to A.R.S. § 41-2177 (H).

2. I failed to renew my license on time. I just discovered this error and have mailed my signed renewal form and the renewal fee. Can I continue to operate my business?

ANSWER: No, you may not resume operations until all items and fees necessary for late renewal of the license have been received and processed by the Department and a renewal license certificate has been issued by the Department. If your license has been non-renewed for more than one year, you will need to apply for a new license.

3. What types of retailer licenses require bonding?

ANSWER: Surety or cash bonds are required of any properly licensed retailer who engages in the sale of mobile homes, manufactured homes or factory-built buildings and subassemblies, pursuant to A.R.S. § 41-2179 and A.A.C. R4-34-401 and R4-34-402. Brokers, with a D-8B classification license, are exempt from the bonding requirement.

4. How do I add a branch location to my existing license?

ANSWER: Submit a letter to the Licensing Section of the Department that indicates the effective date that the branch will be opening, the business name of the branch, the branch address, and the branch phone number. A $10.00 administrative function fee is required to add a branch location. If the branch is for a manufacturer or for an installer, the manufacturer or installer must provide the Department with the required surety or cash bond for the branch location.

SALE OF RETAILER OWNED INVENTORY

1. What paperwork should I have in my sales files to prove that a mobile home, manufactured home or residential factory-built building was owned by my dealership at the time it was sold to a purchaser?

ANSWER: Any of the following items are acceptable proof that the retailer owned the inventory at the time of sale if the documentation is dated prior to the date that the retailer sold the unit to a purchaser: Bill of Sale, copy of check for purchase of the unit, copy of Certificate of Title showing that the unit was titled to the retailer, copy of previous purchase agreement showing when the unit was taken as a trade-in during a previous sales transaction, copy of the front and back of the properly signed off title received from the seller of the unit which indicates the date that the title was signed over to the retailer, or copy of purchase agreement between the retailer and the seller.

2. The mobile home, manufactured home or residential factory-built building that my dealership sold was dealer-owned inventory at the time of the sale to the purchaser. My dealership executed a promissory note with the purchaser for the unpaid balance of the purchase price. How do I keep from having to put the purchaser's payments into my trust account/escrow account?

ANSWER: Pursuant to A.R.S. § 41-2142 (13), monies that are received after consummation has taken place are not considered earnest monies. To consummate this sales transaction, you should transfer title into the purchaser's name and secure your dealership's lien on the title. Refer to Chapter 5 of this handbook for acceptable evidence of consummation. Payments made on the promissory note, which are received after the unit has been titled into the purchaser's name, are not required to be deposited into the retailer's trust or escrow account.

REAL ESTATE BROKERS AND REAL ESTATE SALESPERSONS

1. My dealership has placed mobile homes, manufactured homes or factory-built buildings on lots in a sub-division so that the units can be sold as a package with the land. We intend to allow licensed real estate brokers and real estate salespersons show and sell these units. Is there a problem with this?

ANSWER: Yes, licensed real estate brokers and real estate salespersons are exempt from having to be licensed with the Department if they are involved in the sale or listing of a **used** manufactured home, mobile home, factory-built building or subassembly if the **used** mobile home, manufactured home, factory-built building or subassembly is listed in a contract for transfer of an interest in real property executed by its owner and is installed on the real property pursuant to A.R.S. § 41-2178 (B) (1). The exemption does not apply to **new** units. Also, the exemption only applies to a pre-existing unit located on the land. A unit cannot be placed on land to be sold as a package by a real estate broker or salesperson unless that broker or salesperson is also licensed with the Department as a retailer or as a salesperson employed by a licensed retailer. Licensed real estate brokers and real estate salespersons have to be licensed with the Department as a retailer or as a salesperson employed by a licensed retailer in order to sell new units.

2. I have a real estate license in addition to a retailer license to sell new manufactured homes or residential factory-built buildings. I obtained the Department's license so that I can order new units from a licensed manufacturer. I am going to affix the units to lots in a sub-division and sell these as land/home packages. Can I use just my real estate license to do this?

ANSWER: No, you must also use your retailer license with the Department to sell the unit and any salesperson involved in the sale of the units must also use their salesperson's license that was issued by the Department. These license numbers along with the retailer's licensed business name and salesperson's name(s) must be on all contracts. Do not file for Affidavit of Affixture until the home and land are sold to the actual end user. Affidavit of Affixture should be filed in the name of the actual end user.

GENERAL

1. The purchaser is going to pay the full purchase price reflected on the offer to purchase or purchase contract for a used mobile/manufactured home. The purchase price is under $50,000.00 and the transaction is not going through a title company. I am going to consummate the sales transaction on the same day as I receive these funds by giving the purchaser both possession of the home and the properly signed off title. Do I have to receipt and deposit this money into my trust or escrow account even though I consummated this deal on the same day the funds were received?

ANSWER: Yes, the monies were earnest monies at the time that they were received by the retailer/broker. Consummation took place after the monies were received. If consummation occurs on the same day the funds are deposited to the trust/escrow account, the funds can be withdrawn on the same day pursuant to A.R.S. § 41-2180 (N).

2. Can I take consignments? Are there different requirements for handling consignments?

ANSWER: The statutes and rules governing the Department do not define or address consignments. At this time, the Department is treating consignments the same as listed units and all the same procedures apply.

3. Can I pay referral fees to someone who refers a purchaser or potential purchaser to my dealership?

ANSWER: The statutes and rules governing the Department do not address referral fees; however, a person cannot act in the capacity of a salesperson without being properly licensed as a salesperson pursuant to A.R.S. § 41-2194 (3). This includes quoting prices, soliciting or negotiating a sale.

4. What is a false down payment? What can happen to my license if I am found to have falsified a down payment?

ANSWER: A false down payment is showing a down payment on a purchase contract/offer to purchase and/or on documents submitted to a financial institution that was not paid by the purchaser(s) without disclosing that the funds were paid by another party. In addition to violating Federal truth-in-lending laws, which can include penalties of a $1,000,000.00 fine and 30 years imprisonment, you are in violation of A.R.S. § 41-2186 (14), (i.e. false, misleading, or deceptive sales practices), which can result in an administrative action being issued against your license. This administrative action could result in penalties including revocation of your license(s).

5. I have applied for a retailer's/broker's license but it has not been issued yet. Can I start listing or selling units before my license is issued?

ANSWER: No. You cannot act in the capacity of a licensee prior to the issuance of the license pursuant to A.R.S. § 41-2175 (F). Such an action could result in the denial of a license.

6. What is a "wrap" transaction? Can I conduct a "wrap" transaction?

ANSWER: A "wrap" transaction is the sale of a unit with an existing lien on the title for a loan for which the new purchaser(s) cannot or will not qualify. In this type of transaction, the title cannot be transferred out of the previous owner's name(s) into the new purchaser's name(s) due to the existing lien and the loan remains in the name of the seller(s). Retailers/brokers **cannot** conduct this type of transaction because the title cannot be transferred; therefore, the sale cannot be consummated and funds cannot be released from the trust or escrow account or title company. This type of transaction leaves both the purchaser(s) and the seller(s) unprotected. The purchaser(s) has no title to prove ownership of the unit and the seller(s) is still responsible for the loan. Conducting this type of transaction can result in administrative action against your license. This type of transaction is sometimes referred to as an assumption or a lease/option to purchase/rent to own transaction. A wrap is neither an assumption nor a lease with option to purchase/rent to own transaction. Assumptions and lease with option to purchase/rent to own transactions are very specific transactions and are explained in Chapter 6 of this handbook.

7. I applied for title transfer on behalf of my customer, but the MVD/ADOT office will not provide me a copy of the validated title transfer. How do I prove to the Department that I consummated the sale?

ANSWER: Prepare a cover letter to accompany all Applications for Title Transfer. This cover letter should list the name(s) of the purchaser(s) and description of the unit(s) to be titled including the serial number(s). Request the MVD/ADOT agent to date stamp the cover letter to show that the Applications for Title Transfers have been received. Please refer to Chapter 5 of this handbook for more information regarding consummation.

8. The prospective purchaser gave me a $500.00 down payment towards the purchase price of the unit. I ran a credit check and found that the customer has bad credit. I have not deposited the money into my trust or escrow account yet. How can I return the funds to the customer? What documentation should be in my file?

ANSWER: All earnest money must be deposited to the trust or escrow account within two business banking days from the date of receipt. If you are still within this time frame, you can return the funds to the prospective purchaser without depositing the funds into your trust or escrow account. Request the prospective purchaser return his copy of the earnest money receipt. Staple all receipts back into the receipt book and write, "VOIDED – MONEY RETURNED". If the down payment was in the form of a check, take a copy of the check for your files and have the prospective purchaser indicate that the check was returned to him on this copy. Be sure to have the prospective purchaser date his signature. If the down payment was in the form of cash, prepare a statement for the prospective purchaser to sign that indicates that the cash was returned to him. Include a date line for the prospective purchaser to date his signature. If you are not returning the funds within the two business banking days, you must deposit the funds into your trust or escrow account and refund the monies from your trust or escrow account. If the deposit was made by check, be sure that the check has cleared before giving the prospective purchaser a refund.

9. Are administrative hearings held at the Department's office?

ANSWER: No, administrative hearings are held at the Office of Administrative Hearings, an independent agency. Consumer complaints, filed with the Department, are verified by the Department. If an administrative hearing is warranted, the Department will contact the Office of Administrative Hearings to request a hearing date and time for the Complainant. The Complainant and applicable licensees will be sent a Notice of Hearing from the Department which will advise the parties of the hearing date, time and location.

10. The Department suspended my license. Department staff placed Notice Tags on the units on my lot(s). The Department has now reinstated my license. Can I remove the Notice Tags from my inventory?

NSWER: Notice Tags shall not be removed by anyone without the authorization of the Department pursuant to A.R.S. § 41-2193 (B). You must contact the Deputy Director to obtain authorization.

11. The statute states that I must deposit all earnest money into my trust or escrow account within two business banking days. How does the Department count the two business days?

ANSWER: The day after the date of receipt is counted as the first business day. Weekends and holidays are not counted.

12. The validated earnest money deposit slip shows that the earnest money was received on one date, but was not credited or posted to my trust/escrow account until the next day. Which date does the Department consider to be the deposit date?

ANSWER: The Department will accept the date of receipt, indicated by the financial institution, to be the deposit date.

13. What some examples of “false, misleading or deceptive sales practices”?

ANSWER: **Some** examples of false, misleading or deceptive sales practices in the sale or offer of sale of a unit are falsification of down payments, forging of signatures and dates, misrepresentation of the year of the unit being sold, misrepresentation of the identity of the seller of the unit, advertising misrepresentations, etc.

14. How do I change the Qualifying Party for my license?

ANSWER: Pursuant to A.R.S. § 41-2177 (F), the licensee shall notify the Department in writing of the disassociation of the Qualifying Party no later than five business days after the disassociation. The licensee shall also notify the Department as to who will be temporarily responsible for the operation of the business. The Qualifying Party is also responsible for notifying the Department of his disassociation no later than five business days after the disassociation. Pursuant to A.R.S. § 41-2177 (G), an application for a new Qualifying Party must include completion of a Certificate of Qualifying Party form, an Authorization for Release of Information form, fingerprints, all applicable fees, successful completion of testing (if applicable), and any other information required by the Department. The absence of a written designated Qualifying Party for sixty days is grounds for suspension of the license. Contact the Licensing Section for further information.

15. As a retailer/broker, am I responsible for the completion of work on a purchaser’s unit by a properly licensed contractor/installer?

ANSWER: You are responsible for providing all goods and services that were part of the purchase unless otherwise agreed to and noted on the purchase contract or addendum. You are responsible for contracting with properly licensed contractors/installers for the completion of these goods and services. If this work is not properly completed, you can be held responsible as the prime contractor.

EXAMPLES

The following pages are examples of forms and types of consummation referred to throughout this handbook.