

INTRODUCTION

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

As defined in A.A.C. R4-34-101 (20), "Retailer" means a **DEALER OR BROKER**.

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CHAPTER 1 – GENERAL STATEMENTS

1. The purpose of this handbook is to assist licensed Retailers in understanding the Department's statutes and rules governing trust and escrow account requirements. "Retailer" means a dealer or broker.
2. The Department shall conduct an audit of each Retailer's trust or escrow account, including any transactions with an independent escrow account, at least once every two years pursuant to A.R.S. § 41-4030 (D). This statute does not prohibit the Department from conducting audits more often.
3. Audits will be conducted at the principal place of business or may be conducted by mail or email. If the Retailer's principal place of business is not within the State of Arizona, all records will be audited at the Retailer's licensed Arizona branch location or by mail or email.
4. The Retailer shall retain records for a period of three years pursuant to A.R.S. § 41-4030 (P). The Retailer shall maintain a record of all transaction documents pursuant to A.A.C. R4-34-301 (A).
5. 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 in sales transactions; however, this handbook will provide you with information and examples to enable you to meet the minimum requirements for trust account and/or escrow account audits.
6. In every transaction, the Retailer shall provide the purchaser with a copy of all completed and signed documents pursuant to A.A.C. R4-34-301 (A) (1).
7. In all brokered transactions, a Retailer shall provide a copy of the agency disclosure to the party or parties the Retailer represents pursuant to A.A.C. R4-34-303 (A).
8. In a co-brokered transaction, the listing Retailer shall provide a copy of the listing agreement to the selling Retailer and the selling Retailer shall provide a copy of all completed and signed documents to the listing Retailer pursuant to A.A.C. R4-34-301 (A) (3). Note that the Department's statutes and rules do not address co-brokering between an ADOH-licensed Retailer and an Arizona Department of Real Estate ("ADRE") licensed real estate broker and/or licensed real estate salesperson. It is the Department's position that, should this occur, the ADOH-licensed Retailer will take the lead in the transaction and will ensure that the transaction is conducted in accordance with the Department's statutes and Rules.
9. In a co-brokered transaction, the seller shall pay the commission shown on the listing agreement as the total commission pursuant to A.A.C. R4-34-303 (D). The seller shall not be charged more commission than what is stated on the listing agreement.
10. A Retailer shall include the Retailer's licensed business name in all advertising pursuant to A.A.C. R4-34-302 (A). There is no requirement that the Retailer's license number also appear.
11. In a brokered transaction, a Retailer 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 person a licensed salesperson or licensed Retailer represents in a brokered transaction.
3. **Agent** – A licensed Retailer authorized to act on behalf of a seller, purchaser, or both the seller and purchaser of a used home.
4. **Board** – The Board of Manufactured Housing.
5. **Bona fide Lender (as used in A.R.S. § 41-4030 (R))** – A bank, credit union, savings and loan or other financial institution that has financed the unit that is the subject of the sale or any party who has a lien documented on the certificate of title of the unit that is the subject of the sale.
6. **Broker** – Any person who acts as an agent for the sale or exchange of a used manufactured home or mobile home except as exempted in section 41-4028. A broker cannot own inventory/cannot purchase homes for resale. A ‘Broker’ is a licensed Dealer that holds a D-8B license classification.
7. **Brokered Transaction** – A transaction in which a properly licensed Retailer acts as an agent for the seller, purchaser, or both.
8. **Co-brokered Transaction** – A transaction in which the listing Retailer and the selling Retailer are not the same person/company.
9. **Consummation of Sale** – Means that a purchaser has received all goods and services that the Dealer or Broker agreed to provide at the time the contract was entered into, the transfer of title or the filing of an affidavit of affixture, if applicable, to the sale. Consummation of sale does not include warranties.
10. **Dealer** – Any person who sells, exchanges, buys, offers or attempts to negotiate or acts as an agent for the sale or exchange of factory-built buildings, manufactured homes or mobile homes except as exempted in 41-4028. A lease or rental agreement by which the user acquired ownership of the unit, with or without additional remuneration, is considered a sale.
11. **Department** – Means the Arizona Department of Housing.
12. **Earnest Money** – Means all monies given by a purchaser or a financial institution to a Retailer 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 Retailer-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.

DEFINITIONS Continued...

14. **New** – Means a unit that was not previously sold, bargained, exchanged or given away to a purchaser.
15. **Offer to Purchase** – In a brokered transaction, a written agreement between a purchaser and seller of a listed used home that indicates the sales price and terms of the sale.
16. **Used Home** – Means a previously titled manufactured home, mobile home or FBB designed for use as a residential dwelling. A “used unit” means any unit that is regulated by this Department and that has been sold, bargained, exchanged or given away from a purchaser who first acquired the unit that was titled in the name of such purchaser.

*All definitions reference Arizona Revised Statutes, Section 41-4001 *et seq*, Arizona Administrative Code R4-34-101.3 *et seq* and Arizona Administrative Code R4-34-303 *et seq*.

CHAPTER 3 – TRUST/ESCROW ACCOUNTS

1. Each properly licensed Retailer 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 that is located in Arizona or shall use the services of an escrow agent (title company) that is located in Arizona pursuant to A.R.S. § 41-4030 (D).
 - A. Pursuant to A.R.S. § 41-4030 (D), a licensee handling such a transaction shall disclose to the purchaser, in writing and 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 (or Retailer escrow account) that is controlled by the licensee.
 - B. The purchaser may request that the Retailer establish an independent escrow account and if such request is made in writing no later than the time the purchase contract is signed, and the seller consents, the Retailer shall comply.
 - C. If the Retailer uses an escrow agent (title company) in all transactions, the Retailer is not required to provide the purchaser with this written notification.
 - D. If the Retailer has a Retailer trust account or Retailer escrow account and the purchaser consents to the Retailer trust account or Retailer escrow account being used in the transaction, the Retailer is not required to obtain the seller's consent to this.
2. Pursuant to A.R.S. § 41-4030 (A), each Dealer shall establish an independent escrow account with an independent financial institution or escrow agent (title company) 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 that is licensed to sell new units may sell a new manufactured home or a new factory-built building designed for use as a residential dwelling as a licensee, using the Dealer's trust or escrow account with a financial institution that is located in Arizona, 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 with the Department 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 Department that the park owner either holds the Retailer license, owns a majority interest in the Retailer license or is controlled by an entity that holds a controlling interest in the Retailer license.
 - At the time of the sale, the licensed Dealer has posted with the Department a license bond in an amount of at least one hundred thousand dollars (\$100,000.00) in a form satisfactory to the Department covering sales by parks sharing common control.

4. The trust account or escrow account must be established with a financial institution or escrow agent (title company) located in the State of Arizona pursuant to A.R.S. § 41-4030 (A) and (D).
5. A Retailer may maintain only one trust account or escrow account at a financial institution pursuant to § A.R.S. 41-4030 (D). A Retailer may use the services of more than one title company that is located in Arizona.
6. In order to designate a trust account or an escrow account, a Retailer must provide the Department with the originally completed, signed and notarized Trust or Escrow Account and Authorization for Release of Information form ("Authorization form") for their designated trust account or escrow account pursuant to A.R.S. § 41-4030 (E) & (F). A Retailer may designate an Arizona title company instead of an Arizona financial institution. If completing an Authorization form for a title company, the Retailer will identify the account number as "various" since each transaction will have its own escrow account number assigned to it. A person that the title company recognizes as being affiliated with the Retailer will sign the form on the line that is provided for the Signatory on Account Signature.
7. A Retailer may designate and utilize both a trust account or an escrow account with an Arizona financial institution and an Arizona title company.
8. A Retailer may keep no more than \$200.00 of the Retailer's own money in the Retailer trust account or Retailer escrow account. Pursuant to A.R.S. § 41-4030 (K), these funds are for the purpose of offsetting bank service charges. If the Retailer's trust account or Retailer's escrow account earns interest, the interest and any other Retailer funds must stay within the \$200.00 limit.
9. A trust account or an escrow account cannot be a "sweep" account. All funds deposited in the Retailer's trust account or the Retailer's escrow account for pending sales must remain in that account at all times until the sale has been consummated or terminated pursuant to A.R.S. § 41-4030 (N) (1) and (2) or as provided in A.R.S. § 41-4030 (R) with regards to flooring/inventory payoff or lien holder payoff.
10. The trust account or 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 funds to offset services charges as described above in Item #8, can be deposited into the Retailer trust or Retailer escrow account.
11. If the Retailer wishes to change its trust or escrow account, the Retailer 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 business account application for the new trust or escrow account. The Department will not accept a copy of the completed form. The Retailer 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. When all outstanding checks, etc. clear the previous trust or escrow account, the Retailer must provide the Department with proof of the date that the previous trust or escrow 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 must provide the Department with an originally completed, signed and notarized Trust or Escrow Authorization and Release of Information form. The Department will not accept of a copy of the form. The Retailer 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 sales transactions that may not include land.

CHAPTER 4 – DOCUMENTS SUBJECT TO AUDIT

1. **Purchase Contract** – This document must contain the date of contract, the Retailer’s licensed business name pursuant to A.R.S. § 41-4039 (10) and license number issued by the Department pursuant to A.R.S. § 41-4026 (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. § 41-4026 (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 that 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 (if a new home) and a space to make this designation pursuant to A.R.S. § 41-4033, signature of the Retailer’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 salesperson, 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 the sales file.
2. **Compatibility Notice** – The Retailer must give a written statement to the prospective purchaser that 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. § 41-4040 (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. A compatibility notice is not required if a used home is being sold ‘where is’ in a mobile home park because compatibility between the home and the utility service facilities for the mobile/manufactured home space was previously determined when the home was initially installed.
3. **Notice of Tax Lien** – Before the sale of a used unit, the Retailer shall 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. § 41-4040 (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 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. § 41-4030 (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. *Best practice: Obtain a consecutively pre-numbered receipt book that is in triplicate. The top copy will go to the purchaser. The middle copy will be placed in the sales file. The bottom copy will remain in the receipt book and be accessible should the file copy be misplaced or lost.*
 - Earnest money received by the Retailer, that 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 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 Retailer’s date of receipt so that it can be

determined that the Retailer gave or delivered these funds to the title company within two (2) business days from the date of Retailer's receipt.

- The purchase contract cannot be used as a receipt for earnest money.
- Funds that are received by the Retailer after consummation should still be receipted in the Retailer'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 trust or escrow account or deposited with a title company. It is recommended that the Retailer maintain copies of proceeds checks in the sales file to prove date(s) that proceeds check(s) checks were issued to Retailer.

5. **Earnest Money Deposit Slips** – All earnest monies shall be deposited in the escrow account or trust account no later than the close of the second banking business day after receipt pursuant to A.R.S. § 41-4030 (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 Retailer shall place all earnest money deposits received in connection with a sales transaction in the trust or escrow account in accordance with A.R.S. § 41-4030 (D). A copy of the financial institution's validated trust or escrow account deposit slip that 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. § 41-4030 (L). The purchaser's name must be written on the deposit slip pursuant to A.R.S. § 41-4030 (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 or escrow account deposit slip should be placed in each of the applicable sales files. Note: If an earnest money deposit is being delivered to/placed with a title company, the title company's dated escrow receipt will be used instead of a deposit slip. A copy of the title company's escrow receipt should be placed in the sales file.

6. **Evidence of Consummation** – The Retailer must retain acceptable evidence of consummation in each sales file. All funds must remain in the trust or escrow account or, if applicable, all funds deposited with the title company must remain in the escrow account with the title company until the sale is consummated. (See Exceptions below.) Consummation of sale means that the purchaser received all goods and services that the Retailer agreed to provide at the time the contract was entered, the transfer of title or the filing of the affidavit of affixture, if applicable to the sale.

A. If a Retailer's trust or escrow account was used and if an overpayment was received from the purchaser, the Retailer may refund the overpayment to the purchaser directly from the trust or escrow account at any time during the transaction.

B. All earnest money that has been deposited into the Retailer's trust or escrow account may be transferred directly from the Retailer's trust or escrow account to an Arizona title company so that the title company can disburse funds to the applicable parties in the transaction. The Retailer must obtain a copy of the final, dated settlement statement and maintain this document in the sales file.

C. If a Retailer's trust or escrow account was used in the sale of a used manufactured home or mobile home that has a purchase price that is less than \$50,000.00, the Retailer may release earnest money from the Retailer's trust or escrow account to pay the bona fide lender that has a lien recorded on the Certificate of Title of the unit that is the subject of the sale. Payment must be made directly from the Retailer's trust or escrow account to the lien holder and may be made no more than ten business days before the completion date (i.e. date of consummation) pursuant to A.R.S. § 41-4030 (R).

D. For those Retailers who have met the statutory requirements set forth in A.R.S. § 41-4030

(C) and used the Retailer's trust or escrow account in the sale of a new manufactured home or new factory-built building designed for use as a residential dwelling, the Retailer may release earnest money from the trust or escrow account to pay the financial institution that floored the unit that is the subject of the sales transaction or may pay the manufacturer of the unit that is the subject of the sales transaction from the Retailer trust or escrow account. Payment must be made directly from the Retailer's trust or escrow account to the manufacturer or to the bona fide lender that floored the home and may be made no more than ten business days before the completion date (i.e. date of consummation) pursuant to A.R.S. § 41-4030 (R).

E. Through the agreed to escrow instructions, a title company may be directed to pay the following parties before the sale is consummated: manufacturer or bona fide lender that floored the home, land owner, lien holder, all installers/contractors. The Retailer may NOT be listed as a co-payee on any of these payments. Any funds paid to the Retailer from the title company, financial institution, or purchaser(s) before the sale is consummated are considered earnest money pursuant to A.R.S. § 41-4001 (16) and must be receipted, deposited to the trust/escrow account, and held in the trust/escrow account until the sale is consummated pursuant to A.R.S. § 41-4030 (N).

F. In a stage-funded construction loan, the lender may 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. The Retailer may NOT be listed as a co-payee on any of these payments. Any funds paid to the Retailer from the financial institution or purchaser before the sale is consummated are considered earnest money pursuant to A.R.S. § 41-4001 (16) and must be receipted, deposited to the trust/escrow account, and held in the trust/escrow account until the sale is consummated pursuant to A.R.S. § 41-4030 (N).

7. **Ledger** – Those Retailers who have a Retailer trust or escrow account must maintain an earnest money ledger pursuant to A.R.S. § 41-4030 (M). This ledger can 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 or 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, whichever are applicable, should be made from the trust or escrow account. All other payments such as payments for sales tax, payments to salespersons, payments to installers/contractors, etc. cannot be paid from the Retailer's trust or escrow account. All of the (applicable) statutorily allowed payments from the trust or escrow account must be made only after the sale has been consummated with the exception of refund to purchaser. The 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 or 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 or escrow account. This would leave only deposits for pending sales un-highlighted. You may use a balance sheet type of ledger that would contain entries for all customer deposits into the trust or escrow account or you may use a client type of ledger and have a ledger card for each customer. Each card would have the entries for that specific customer only.

8. **Proof home was Retailer-Owned Inventory** – Retailer should maintain evidence that the sold unit sold was Retailer-owned inventory in the sales file. 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 Retailer trust or escrow account. This proof may be in the form of:

- a. Copy of purchase contract showing the home as a trade-in;
 - b. Copy of the purchase contract evidencing Retailer's purchase of the home from the previous owner and copy of Retailer's payment to the seller of the home;
 - c. Copy of the bill of sale for the unit and copy of Retailer's payment to the seller of the home;
 - d. Copy of Certificate of Title showing home was titled to Retailer before or on the date of Retailer's purchase contract with the purchaser of the home;
 - e. Copy of the previous year's tax bill that identifies the unit and that identifies the Retailer as the owner.
9. **Installer/Contractor Invoices** – All installer/contractor invoices for all agreed on goods and services should be in each sales file to evidence that the Retailer provided all agreed on goods and services as required by A.R.S. § 41-4039 (20). 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 must be used to perform any work that requires a license pursuant to A.R.S. § 41-4039 (4) and (9). We suggest you obtain a copy of each installer's license before hiring them to perform work and check with the Department 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. If a license to perform work is required by the Department, you must use a properly licensed installer to perform that work.
10. **Manufactured Housing Homeowner Information Bulletin (New) and Manufactured Housing Information Bulletin (Used)** – Both of these forms, that are prescribed by A.R.S. § 41-4040 (E), are referred to as "Homeowner Information Bulletins". When received by the Department, (along with the sales report cover letter and recovery fund payment if applicable to the sale) they constitute compliance with the statutory reporting requirement. The Retailer is to complete the Retailer-required information that is requested on the form. The Retailer is to have the purchaser sign on the homeowner signature line. A sales activity report consists of the sales report cover letter, copies of all applicable Homeowner Information Bulletins (if sales are being reported), and, if applicable, payment of the Consumer Recovery Fund Fee associated with the sale. 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 15.) If no sales were consummated for a given month, you must still send a report to the Department, by the fifteenth of the following month, that states the Retailer had "no sales" for that month pursuant to A.R.S. § 41-4040 (B). This statement should also include the Retailer's license number and licensed business name. In addition to serving as your sales report, the Homeowner Information Bulletin provides the purchaser with information about the Department and about complaint procedures.
11. **Walk-through 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-through 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-through 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. § 41-4032. This form must be signed and dated by the purchaser or their representative and by the retailer's or manufacturer's representative. 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-through, the Retailer or manufacturer shall note the purchaser's failure to attend on the checklist form and proceed with the walk-through. 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-through date pursuant to A.R.S. § 41-4035 (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.
13. **Agency Disclosure** – This is for a brokered transaction only – i.e. the sale of a listed home. This document specifies the party or parties that a licensed salesperson or licensed retailer is representing in a brokered transaction either as the seller's agent, the purchaser's agent, or a dual agent representing both pursuant to A.A.C. R4-34-101 (3). 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. Note: Agency Disclosure to the seller may be stated in the Retailer's listing agreement or in a separate writing.
14. **Listing Agreement** – This is required for a brokered transaction only. A listing agreement must contain the name and address of the seller, the year, manufacturer and serial number of the listed unit, the beginning and ending dates of the time period that the agreement is in force, the name of the lender and lien amount if applicable, the price the seller is requesting for the unit, the commission to be paid to the licensee and the signatures of the seller(s) and the licensee who obtained the listing pursuant to A.R.S. § 41-4001 (23). 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 must state a minimum commission statement in the agreement. A minimum commission statement will provide for a commission to the Retailer in a net listing agreement regardless of the amount of the offer to purchase accepted by the seller. The salesperson's name and salesperson license number must appear on the listing agreement. *Qualifying party is not required to have a salesperson license.

If a change is made to the 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 salesperson pursuant to A.A.C. R4-34-303 (E). The salesperson's license number must appear on the addendum along with the Retailer'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 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 (3). 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. R4-34-302 (B). This commission amount should be divided (however decided by the Retailers) between the Retailers 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. § 41-4048 (L). When the offer to purchase is prepared by the Retailer's salesperson, the offer must contain the Retailer's licensed business name pursuant to A.R.S. § 41-4039 (10) and business

license number issued by the Department pursuant to A.R.S. § 41-4026 (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. § 41-4026 (E), the name(s) of the prospective purchaser(s), a description of the unit that includes 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. § 41-4048 (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. Seller Closing Statement – 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. *Best practice: The Retailer should also provide the buyer with a buyer's closing statement that includes an accounting of all expenses charged to the buyer, all pro rations and all credits. During an audit, the Retailer will be asked why more money was received than what may have been stated on the Offer to Purchase/purchase contract. The buyer's closing statement would assist the Department in understanding the difference between the amount stated on the Offer to Purchase/purchase contract and the amount that was received by the Retailer.*
17. Trust or Escrow Account Bank Statements – The Retailer should have copies of all trust or escrow account bank statements. These bank statements will be needed to determine the date a trust or escrow account withdrawal was made or the date a trust or 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. Form is to be given to and signed by the purchaser on the same date as the purchase contract is signed by purchaser.
19. Escrow terms or instructions – If practicable, the escrow terms or conditions shall be included in the purchase contract or stated in an addendum to the purchase contract. The escrow terms or conditions could be contained in a separate document. At a minimum, the escrow terms or instructions shall contain the following information pursuant to A.R.S. § 41-4030 (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 – Pursuant to A.R.S. § 41-4030 (D), in used home sales that have a purchase price that is less than \$50,000.00, the Retailer must advise the purchaser in writing, before or at the time the purchaser signs the purchase contract (or offer to purchase), that the purchaser may request in writing the use of an independent escrow account (with a title company) and that the transaction will otherwise be handled through a trust (or escrow) account that is controlled by the licensee.
Note: This notification is not required if the Retailer uses a title company in all transactions regardless of the purchase price.

CHAPTER 5 – ACCEPTABLE EVIDENCE OF CONSUMMATION

Consummation of sale means that a purchaser has received all goods and services that the Dealer or Broker agreed to provide at the time the contract was entered into, the transfer of title or the filing of an affidavit of affixture, if applicable, to the sale. Evidence of consummation should be placed in each completed sales file.

Dealer or Broker Responsible for Title Transfer or for Filing for the Affidavit of Affixture

1. Application for Title Transfer Date Stamped/Validated by the Arizona Department of Transportation/Motor Vehicle Division (“MVD”) - Contact MVD or an MVD third-party provider with any questions you may have regarding titling and to obtain these forms. When you take the completed form to MVD or to an MVD third-party provider, along with any other necessary documentation, also take a copy of the application with you. Ask the agent to date stamp or validate the copy of the application. This date on the date stamp or the validation date is the date of consummation. Place a copy of the MVD date stamped or validated application for title transfer form in the sales file.
2. Certificate of Title – 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.
3. Department of Transportation/MVD Date Stamped/Validated Transmittal Form – The transmittal form functions as a cover letter to MVD (or the MVD third-party provider) when the Retailer 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 MVD or the MVD third-party provider, along with any other necessary documentation, also take an extra copy of the transmittal form with you. Ask the agent 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.
4. ADOT Payment Receipt – According to MVD, the date on the receipt is the date that the home was titled and will appear in their system as such although the actual title may not be mailed to the purchaser until later. In order for the Department to accept the ADOT Payment Receipt as evidence that a home was titled, it must, at the minimum, identify the name of the purchaser or the serial number of the purchased home. Without identification of either the name of the purchaser or the serial number of the purchased home, it is not possible for the Department to determine that the payment receipt relates to a particular sales transaction.
5. Affidavit of Affixture – This form may be obtained from MVD. The date that the MVD agent dates his or signature under the section called ‘Receipt of Surrendered Mobile Home Documents’ is the date of consummation. Place a copy of the signed and dated Affidavit of Affixture form in the sales file.

Financial Institution Responsible 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 of the purchase price or the Retailer is carrying the balance or a private lending source is carrying the balance or another Retailer is the seller and is carrying the balance of the purchase price, the Retailer selling the unit to the purchaser(s) should apply for the title or Affidavit of Affixture in the name of the purchaser(s) and properly secure the lien for the party who is carrying the balance pursuant to A.A.C. R4-34-303 (F). The Retailer must obtain one of the forms of consummation listed in the previous section. 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 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. If the Retailer has received only the amount due the Retailer for commission, this is referred to as net proceeds. If the Retailer is given the full or gross proceeds, the Department will require payment information from the Retailer’s trust/escrow account or from the Retailer’s 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 should obtain a statement from the financial institution that identifies the name of the customer, the serial number of the unit, and that states 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.
2. Often, a financial institution will not provide a Retailer with copies of the finance and proceeds documents if the Retailer was not involved in obtaining the financing. If this is the case, the Retailer should obtain a signed statement from the financial institution (that is on the financial institution’s letterhead) that states the customer’s name, the amount financed, the date that the lender funded or cashed their contract with the purchaser, 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. The funding date is the date of consummation if the lender took responsibility for titling. A copy of this statement should be placed in the sales file.

Title Company Responsible for Transfer of Title or Affidavit of Affixture

Final dated Settlement or Closing Statement: A settlement statement or closing statement that is designated as 'pre-audit' is not acceptable since figures and dates will often change. The settlement date or closing date on the final, dated settlement or closing statement will be viewed as the date that the title company took responsibility for titling a home or for filing for the Affidavit of Affixture if the settlement statement evidences that fees were disbursed to the title company for titling or for filing for the Affidavit of Affixture or if the settlement or closing statement shows that the title company either paid titling fees directly to the appropriate government agency or if the settlement or closing statement evidences that the title company paid fees directly to an MVD third-party provider.

* The final, dated settlement statement or closing statement should show to whom the title company made payments. Disbursements may be to a lien holder, seller, flooring company or manufacturer, tax payments, payments to contractors/installers, titling or Affidavit of Affixture fee to Retailer, etc. **The Retailer may obtain a final disbursement or closing report from the title company that shows all of the same information as would be seen on the settlement statement or closing statement.

The settlement date or closing date stated on the final, dated settlement statement or closing statement, along with evidence that the title company was responsible for titling the home or for filing for the Affidavit of Affixture, 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 MVD third-party for these services.

A copy of the escrow instructions and/or a copy of supplement to the escrow instructions indicating that the title company is responsible for titling the home or for filing for the Affidavit of Affixture 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 proceeds. The date of the final draw check, if made at the completion of the transaction, along with the escrow instructions and the final, dated settlement/closing 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 or final, dated closing statement, the Retailer should obtain a statement from the title company giving the escrow number, 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 MVD third party 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 so that the Retailer can apply for title or Affidavit of Affixture, the settlement date (or closing date) on the final, dated settlement statement (or closing statement) will NOT be accepted as the date of consummation. The date of consummation will be the date that the Retailer titled the home or filed for Affidavit of Affixture, whichever is applicable.**

Purchaser Responsible for Transfer of Title or Affidavit of Affixture

Buyer's Acceptance Form – This form is to be used for full cash sales only. It is used evidence that a buyer received possession of a used home sold 'where is' and the properly signed off title(s) so buyer can title the purchased home. It may also be used to evidence that the buyer received the purchased new home and the properly signed off Manufacturer's Certificates of Origin so that the buyer can either title the home or file for an Affidavit of Affixture. This form is to be completed by the Retailer's salesperson at the close of the transaction. The salesperson who signs the form on behalf of the Retailership must be the salesperson who witnessed the buyer signing and dating this form. At the point that all funds have been received for the transaction and the buyer has received all agreed on goods and services (i.e. the unit has been installed if installation was part of the sales contract or the buyer received possession of the unit that was sold 'where is' and the properly signed off title(s) or MSO(s)/MCO(s) are given to the purchaser(s) because the purchaser has chosen to file for his own title or has chosen to file for Affidavit of Affixture, 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 MVD.

Receipt of All Agreed on Goods and Services

The purchase agreement, and any subsequent writings between the purchaser and the Retailer, determine what the agreed on goods and services are. Below are some items that could be part of the agreed on goods and services between the purchaser and the Retailer.

1. Delivery of home: The date that the home was delivered can be evidenced by the transporter's bill that indicates the delivery date or could be evidenced by a signed letter/statement from the purchaser that indicates on what date the purchaser received the home.
2. Installation of the home: Evidence of the date that the home was installed could be evidenced by an inspection report that shows the date that the installation of the home was approved by the inspector or by a Certificate of Occupancy. The installer's certificate report could also be used to evidence the date that the home was installed.
3. Installation of accessory structures: Evidence of the date that the accessory structures were installed could be evidenced by an inspection report that shows the date(s) that the installation of the accessory structures was approved by the inspector or the installer's certificate report could be used to evidence the date of installation.
4. Payment of back taxes or past due space rent: Evidence of these items could be in the form of paid receipts for these items or copies of the Retailer's cancelled checks that pertain to these items.
5. Retailer responsibility for titling the home or for filing for the Affidavit of Affixture: Evidence of this has been outlined in Dealer or Broker Responsible for Title Transfer or for Filing for the Affidavit of Affixture.

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 a 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. § 41-4039 (10), and the Retailer's license number issued by the Department, pursuant to A.R.S. § 41-4026 (E), and the salesperson(s) name(s) and salesperson license number(s) issued by the Department, pursuant to A.R.S. § 41-4026 (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) Received in the Retailer's earnest money receipt book pursuant to A.R.S. §41-4030 (G), deposited to the Retailer's trust/escrow account or title company pursuant to A.R.S. § 41-4030 (A), (D) and (H), and held in such account until consummation of the sale or termination of the sale pursuant to A.R.S. § 41-4030 (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 of the sale, pursuant to A.R.S. § 41-4030 (N) (1), are earnest money pursuant to A.R.S. § 41-4001 (16) and must be handled as described in Item #5a above.
7. The month in which consummation takes place is the month for which the Retailer shall report the sale to the Department pursuant to A.R.S. § 41-4040 (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 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.

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. § 41-4001 (16) 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 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 MVD third party 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, before consummation of the sale or on the same day the sale is consummated, are considered earnest money pursuant to A.R.S. §41-4001 (16). 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 sale is consummated the same day the funds are received. Once the sale is consummated, the funds can be withdrawn from the trust/escrow account or the title company may disburse funds to the Retailer. If the funds are deposited the same day the transaction is consummated, the funds can also be withdrawn from the trust/escrow account on the same day or the title company may disburse proceeds to the Retailer on the same day.

CHAPTER 7 – WHAT TO EXPECT WHEN AN AUDIT IS CONDUCTED

1. Each licensed Retailer of mobile homes, manufactured homes, or residential factory-built buildings must be audited at least once every two years pursuant to A.R.S. § 41-4030 (D).
2. If a Retailer has had no sales or no sales subject to audit, the Department will send a letter (or email) asking for confirmation that no sales or no sales subject to audit have taken place during the prescribed time period that is stated in the letter or email. The Retailer will be requested to provide the Department with a newly completed Trust or Escrow Account Authorization and Release of Information. If the Retailer has a trust or escrow account at a financial institution, and there have been changes to the signers on the account, the Retailer will be requested to provide a copy of the signature card that indicates the names of the additional signers. If the Retailer indicates that a new trust or escrow account has been opened at a financial institution, the Retailer will be requested to provide a copy of the front and back of the signature card or account application for the new account as well as evidence from the former bank that states the date the previous trust or escrow account was closed. If the Retailer has a trust account or escrow account at a financial institution, the Retailer will be requested to provide evidence of the current balance in that account. 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 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 has had sales, the Department will conduct the audit by mail or email in most cases. This audit will include a random sample of all reported sales from all licensed locations of the Retailer. The Department's letter or email will identify the sales to be audited and will provide the Retailer with a detailed list of all documentation that is to be provided to the Department. The Department prefers to receive copies of all requested sales documents so that the documents may be shredded at the completion of the audit, provided there are no outstanding matters discovered during the audit.
4. The auditor will review the records and record information on audit work sheets.
5. An audit report will be either emailed or mailed to Retailer after the audit has been completed. The audit report will advise of any violations of statutes, rules, or substantive policies cited by the auditor and, if applicable, provide the Retailer with direction on how to correct the cited violations and/or the audit report may request that the Retailer provide additional documentation. The audit report will advise of the date that the additional documentation and/or corrective documentation is due.
6. If you disagree with a cited violation, please notify the auditor of this and explain why you disagree 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 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.

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. § 41-4040 and A.R.S. § 41-4042, 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 15.). Complete the Retailer required information on the Homeowner Information Bulletin and have the purchaser sign the form on the Homeowner Signature line. 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 Department of Housing or you may pay the Consumer Recovery Fund assessment fee at the ADOH payment portal. Your check for the owed recovery fund assessment fees must accompany your sales report if you decide to mail your sales report to the Department. 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. You may use the Sales Report cover letter to report no sales.

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 (Homeowner) signature line. Note on the purchaser (Homeowner) signature line that the purchaser has refused to sign the Homeowner Information Bulletin and submit the Homeowner Information Bulletin to the Department with the Retailer 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) 771-1002 or email your sales report to donna.grant@azhousing.gov. If reporting no sales for a given reporting period, identify your licensed business name, license number, and the month/year for which you are reporting no sales or report no sales on the Sales Report Cover Letter. If reporting sales, mail or email the completed the Sales Report Cover letter along with the appropriate completed Homeowner Information Bulletins. 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 Sales Report 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 may send a statement to the Department that 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 Retailer's sales reports?

ANSWER: Yes, sales report files are public record. You must submit a Public Records Request identifying the names of the Retailers and stating which sales activity reports you wish to have copies of.

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 the fee is owed.

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

ANSWER: You are required to report all sales conducted under the license number issued to you by the Department. Note: A Dealer to Dealer sale can only take place between two Retailers who have the ability to own inventory. Retailer A holds a D-8 or D-12 license and owns the home that is the subject of the sale to Retailer B who also holds a D-8 or D-12 license.

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.

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 that you send 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 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 an amended Sales Report Cover Letter to the Department letter along with a copy of the additional Homeowner Information Bulletins. If a Recovery Fund assessment fee is required, include your payment with your amended report or pay this amount online at the ADOH Payment Portal.

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 sale 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 a new Trust or Escrow Account and Authorization for Release of Information form that 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 form 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.

4. I am canceling my Retailer license and am going to transfer my pending deals to another licensed Retailer. How do I do this?

ANSWER: You cannot arbitrarily assign your pending deals to another licensed Retailer. (The same applies to listings.) You must have the consent of the purchasers to do so. If the purchasers grant consent, the other Retailer should execute new purchase contracts/offers to purchase with these purchasers. The initial Retailer should refund earnest monies to those purchasers that do not wish to allow their sales transactions to be completed by the other Retailer. 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 that 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 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 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 that has received these earnest monies from you. The Retailer 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 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: 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; however, Statutes suggest that it was intended that the account be a checking account.

7. A.R.S. § 41-4030 (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. 'Purchaser' is defined in A.R.S. § 41-4001 (30). 'Purchaser' means a person purchasing a unit in good faith from a licensed Retailer or broker for purposes other than resale.

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 involved in "rent to own" 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 for the extension request. Provide the auditor with an alternate date. The auditor will determine whether to grant the extension and notify you if extension is granted.

2. I kept my files for a period of three years as required by A.R.S. § 41-4030 (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 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. Send this information 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 license certificate prior to this, give the salesperson his 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. 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 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. § 41-4025 (F). A Retailer 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 license and, at the same time, be a licensed salesperson for another dealership?

ANSWER: Yes, a Qualifying Party of a Retailer license may apply for and be issued a salesperson's license to work for another licensed Retailer. Be sure to advise the other Retailer that you are the Qualifying Party for another's Retailer license.

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 must be noted on the purchase contract/offer to purchase.

8. Can a salesperson work for more than one licensed Retailer at a time?

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

9. Are salespersons independent contractors?

ANSWER: No, salespersons are employees of a licensed Retailer. A salesperson must be acting on behalf of their employing Retailer. Pursuant to A.R.S. § 41-4001 (31), 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 fifth 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 that I hold with the Department?

ANSWER: You may only sell a 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 to a properly licensed Retailer. A Broker (D-8B classification) licensed by this Department cannot take these units in on trade because a Broker cannot own inventory. Travel trailers, cars, fifth 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 Housing does not license Retailers 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. § 41-4030 (G). *We recommend that the receipt book be in triplicate.

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

ANSWER: You are to receipt all earnest monies on the date that you receive the funds; therefore, the receipt date should be shown as October 21 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. § 41-4030 (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. § 41-4030 (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 Dealer or Broker before consummation of the sale pursuant to A.R.S. § 41-4001 (16). 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 dealer/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 wired into my trust or escrow account?

ANSWER: No. You 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. § 41-4043 (J).

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

ANSWER: Your license is suspended until you repay the Consumer Recovery Fund the amount awarded plus interest if applicable.

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. § 41-4001 (36), 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. § 41-4001 (30), means a person who purchased a unit in good faith from a licensed Retailer or 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 for new home sales that go through a title company or for used home sales that go 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. § 41-4042 (A).

UNLICENSED ACTIVITY

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

ANSWER: No. The licensee must contract with properly licensed installers and/or 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.

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. § 41-4048 (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 Retailership. 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 listing agreement has already informed the seller of the minimum commission to be paid to the licensee 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. § 41-4048 (L) for failure to present all offers to the seller and A.R.S. § 41-4039 (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 with a D-8 license classification, 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. *A D-8B licensee cannot purchase a unit because the D-8B licensee cannot own inventory.

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. § 41-4048 (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. 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. § 41-4048 (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 the person named in 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 am 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 am 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.

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 A.A.C. R4-34-303 (F).

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, that 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. § 41-4027 (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. § 41-4029 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 signed request from the Qualifying Party, or another who is listed on the license application, to the Licensing Section. The request should indicate the effective date that the branch will open, 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 license bond 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 Retailer-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. § 41-4001 (16), monies that are received after the date of consummation 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. Payments made on the promissory note, that 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.

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. 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. § 41-4030 (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 Retailership?

ANSWER: The statutes and rules governing the Department do not address the term '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. § 41-4047 (3). This includes quoting prices, soliciting or negotiating a sale.

4. What is a false down payment? What can happen to my license if it is learned that I 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. § 41-4039 (14), (i.e. false, misleading, or deceptive sales practices), that 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 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. § 41-4025 (F). Such an action could result in the denial of a license.

6. 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, that are 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.

7. 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?

ANSWER: Notice Tags shall not be removed by anyone without the authorization of the Department pursuant to A.R.S. § 41-4046 (B). You must contact the Assistant Deputy Director to obtain authorization.

8. 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

9. 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.

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

ANSWER: Pursuant to A.R.S. § 41-4027 (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. § 41-4027 (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. *New Qualifying Party packets are on the Department’s website.

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

ANSWER: The Retailer is responsible for providing all agreed on goods and services. The Retailer is responsible for contracting with properly licensed installers for the completion of these goods and services. If the work is not properly completed, the Retailer may be held responsible as the prime contractor.