Agency and Brokerage

Overview

This course will review the areas of mandate, agency, brokerage and representation under Louisiana law. There is a rich and often confusing history of these areas in Louisiana and these materials will navigate through that history arriving at the current modern usage but with discussions of current areas of conflict. This course will make extensive use of case studies using actual Louisiana cases as sources.

A general note about citations is in order. La. C.C. refers to the Louisiana Civil Code. La. R.S. (N)(N) will refer to the Louisiana Revised Statute (the first (N) being the Article number and the second (N) being the Section number. LA.R.S. 37:1430-1470, the Louisiana Real Estate License Law, may be often referred to as the License Law. Citations such as “227 LA. 537, 79 So.2nd873 (1955)” refer to cases decided by Louisiana appellate courts.

The Concept

The concept of a broker or intermediary has been recognized through history and in all manner of commerce. Many languages had a name for broker activity (French – broceur or brocheor; Middle English – Brokour or Brocour; Old Dutch – Brokere; Danish – Bruger; Swedish – Bruk; Old English – Broc). While the activities of these persons varied, they all involve an idea that a broker was an intermediary but also captures the idea that a broker had a larger role in setting customs and practices in a particular trade area.

Louisiana law, until 1977, recognized brokers specifically. La. C.C. Articles 3016-3020 of the Code of 1975 provided as follows:

“Art. 3016. The broker or intermediary is he who is employed to negotiate a matter between two parties, and who, for that reason, is considered as the mandatary of both.

Art. 3017. The obligations of a broker are similar to those of an ordinary mandatary, with this difference, that his engagement is double, and requires that he should observe the same fidelity towards all parties, and not favor one more than another.
Art. 3018. Brokers are not responsible for events which arise in the affairs in which they are employed; they are only, as other agents, answerable for fraud or faults.

Art. 3019. Brokers, except in case of fraud, are not answerable for the insolvency of those to whom they procure sales or loans, although they receive a reward for their agency and speak in favor of him who buys or borrows.

Art. 3020. Commercial and money brokers, besides the obligations which they incur in common with other agents, have their duties prescribed by the laws regulating commerce.”

These articles are revealing. Notice that a “broker” or “intermediary” is representing, and presumably being paid by, both parties to a transaction. La. C.C. Art. 3017 states that the “engagement is double” and puts the broker in a fiduciary relationship to both parties and the broker cannot favor one more than another. These Articles further demonstrate that the broker was not answerable to either party for the failure of one of them to perform nor for the solvency of the parties even if they receive a “reward” for their agency (i.e. are compensated) nor even if they speak “in favor of” one of the parties.

Viewing this from the commercial practices of the time, this relationship was workable. Let us take a cotton broker working in a port city, for example. Cotton is a fungible commodity. That is, with certain allowances for quality which the broker could judge, each bale is like any other bale. Next, prices were determined on site by a readily apparent market. Minimal knowledge of the law of supply and demand might be necessary but not often. In that scenario, the broker’s main efforts would be directed to knowledge of who the sellers were and the quantity they had available and who the buyers were and the quantity they wished to purchase. A broker or intermediary in that circumstance would rarely encounter ethical questions that would pose issues. As long as the broker did not commit fraud that person would be relatively protected.

Mandate

Mandate is long recognized legal institution. It often goes under its common law name of “power of attorney.” While technically incorrect, the use of the term power of attorney to describe mandate is widespread. Louisiana has very particular and expressed rules on mandate.
Mandate is defined as:

“Art. 2989. Mandate Defined: A mandate is a contract by which a person, the principal, confers authority on another person, the mandatary, to transact one or more affairs for the principal.”

The interests served under a mandate may serve the exclusive or common interest of the principal, mandatary or third person (La. C.C. 2991). An example of exclusive interest would be a mandate authorizing a mandatary to sign a sale of the principal’s property. An example of common interest would be a mandate authorizing the sale of property owned jointly by the principal and mandatary.

The mandate is presumed to be gratuitous, that is, the mandatary is not imposing an obligation on the principal such as payment of a fee. Also, the mandate can be onerous if that is agreed to, that is, by contract the principal is obligated for something to the mandatary such as payment of a fee (La. C.C. 2992).

Of real interest to real estate practitioners is La. C.C. Art. 2993. That Article provides:

“Art. 2993. Form.

The Contract of mandate is not required to be in any particular form. Nevertheless, when the law prescribed a certain form for an act, a mandate authorizing the act must be in that form.”

This is sometimes called the “rule of equal dignity.” If the act commissioned by the principal must be in a certain form to be valid, then the form of the mandate must be in that same form. As an example, if the act to be signed by the mandatary must (or is going) to be done in the presence of a Notary and two witnesses, that is, authentic form, then the mandate must also be in authentic form. We should note here modern closing practices. For example, a sale of immovable property (real estate) need not be in authentic form to be valid; it only needs to be in writing to be valid. However, in modern practice notaries require the transfer document to be in authentic form for many sound legal reasons. Therefore, they will require that the mandate be in authentic form. Other reasons exist for closing attorneys to require mandates to sell to be in authentic form. Authentic acts are “self-proving” that is, they require no testimony as to the authenticity of the principal’s signature but may be directly introduced as evidence. Since principals will often reside in another state (or unfortunately, may die), if a dispute arises the mandate is self-proving.
The authority granted may be general (La. C. C. Art. 2994), that is a grant of general authority to whatever is appropriate under the circumstances. Further, under La. C.C. Art. 2995, the mandatary, even without a specific grant of authority may perform acts incidental to or necessary for the performance of a mandate.

In contrast however, certain acts must be specifically granted for the mandatary to have the authority to act. Under La. C.C. Art. 2996 the authority to transfer ownership, acquire, encumber (e.g. mortgage) or lease property must be expressly given.

Old La. C.C. Art. 3017, discussed above in brokerage, has been replaced with La. C.C. Art. 3000. It states:

“Art. 3000. Mandatary of both parties.

A person may be the mandatary of two or more parties, such as a buyer and a seller, for the purpose of transacting one or more affairs involving all of them. In such a case, the mandatary must disclose to each party that the also represents the other.”

While this appears at first glance to not be much of a change from the old Article 3017, of significance, the terms “broker” and “intermediary” have been dropped. The comments to Article 3000 state that the rules governing particular types of brokerage contracts are found in “special legislation.” A prime example of “special legislation” is the License Law.

“SPECIAL LEGISLATION” - THE HISTORY AND BACKGROUND OF THE REAL ESTATE LICENSE LAW.

The first Real Estate License Law was passed by the Louisiana Legislature in 1920, to become effective after January 1, 2021. The 1920 License Law was an attempt to regulate a commercial industry by defining the business of real estate brokerage and setting standards to become a broker and “salesman.” Broker was defined as: “A real estate broker within the meaning of this Act is any person, firm, partnership, association, co-partnership or corporation, who for a compensation or valuable consideration sells or offers for sale, buys or offers to buy, or negotiate the purchase or sale or exchange of real estate, or who leases or offers to lease or rents or offers for rent, any real estate or the improvements thereon for others, as a whole or partial vocation.”
A salesman was defined as: “A real estate salesman within the meaning of this Act is any person who for a compensation or valuable consideration is employed either directly or indirectly by a licensed real estate broker to sell or offer to sell, or buy or offer to buy, or to negotiate the purchase or sale or exchange of real estate, or lease or offer to lease, rent or offer for rent any real estate for others as a whole or partial vocation.” Exempted from the licensing requirement were: “persons holding a duly executed power of attorney from the owner for the sale, leasing or rental of real estate…”

At this point, the License Law did not attempt to separate out the dual representation obligations under the Code. The only oblique reference was the exemptions of persons who were mandataries under the Civil Code, that is those acting under a “power of attorney.”

The License Law did clearly separate the role of broker and salesman. The salesman had to be working under a broker. The License Law made it unlawful for a salesman to accept any commission from anyone other than his employer who was required to be a licensed broker.

The Real Estate Commission (also created by the 1920 act) was given the power to suspend or revoke a broker or salesmen’s license for:

Section 17:

“(d) Acting for more than one party in a transaction without knowledge of all parties thereto;”

Since a broker, at that time under the Civil Code, was an ‘intermediary,” that is representing both parties, trying to reconcile the License Law with the Civil Code was difficult. On one hand the Civil Code defined brokers as representatives of both parties. On the other hand, the License Law, by requiring disclosure of such representation, implied that a licensed real estate broker is expected to represent its client; if it is representing anyone else this fact must be disclosed. Said another way, by requiring disclosure of dual representation the License Law implies that the broker is normally representing one party to the transaction. This dichotomy was confusing. It came to fruition in a Louisiana Supreme Court Case. (79 So.2d873).

In that case the broker was the listing broker. The party suing was a potential buyer. This buyer had made several offers, all rejected. However, broker did indicate a price he thought would be acceptable. Buyer then made an offer for that price. The buyer alleged that the broker never presented the offer to the Seller and falsely represented to the Seller that another, lower, offer was the highest obtained. The Seller accepted the lower offer and sold the property. The potential buyer sues, alleging that he needed the property for expansion of
his business and he wants as damages the difference between his offer and the correct asking price.

Now, things get interesting. Noteworthy here is that the Seller, who accepted the lower offer, did not sue. Broker defended the suit with a classic defense: “I owe no duty to the potential buyer. I have no contract with him. I never became his mandatary. I owe him no duty.”

The Louisiana Supreme Court found otherwise. First, the Supreme Court noted the broker’s defense was true in most cases, but in this case they were governed by special laws, i.e., the License Law. The Court noted that for the broker to act at all, he had to be licensed under the License Law. The Court noted that under (then) the License Law Section 1447 that:

“Anyone who is injured or damaged by the agent or broker by any wrongful act done in the furtherance of s business or by any fraud or misrepresentation by the agent or broker may sue for the recovery of the damage before any court of competent jurisdiction.”

The Court found that an object and purpose of the License Law was to protect the general public interest and welfare. It stated that the License Law put real estate brokerage in the status of a public business and that brokers owed a duty to the public whether they had a contract with them, were their mandatary, or otherwise.

At this point the Supreme Court is bringing into play duties brokers owe to those with whom they have no contract. The Court did not use Civil Code Article 3017, but rather relied on the essence of the License Law, that is, a body of regulations made to protect the public at large. Brokers now knew that their duties went beyond these to their client but also to all parties to the transaction.

However, the question now became: What are the limits of the duty to third persons? Would, for example, a broker violate its duty in accepting an offer from a buyer when the broker knew the Seller would accept less? The case law had opened up a broad vista of duties but the boundaries remained unclear.

In 1972, the License Law was amended; however, the 1972 changes made no attempt to resolve the areas where the duties of brokers to third parties lay. (The 1972 amendments added the education requirements for broker and salesman licenses and the Fair Housing declaration.)
In 1978, major revisions were made to the License Law. For our purposes those revisions carried forward the concept of representation of a single party without clarifying the range of duties owed to third parties by brokers and agents.

The 1978 revisions did a number of things. In Section 1431(2), under the definition of “Real Estate Broker,” added that a person was acting as a broker “whether pursuant to a power of attorney or otherwise” when acting for another for compensation in performing the defined real estate acts. This was a clear departure from the 1920 act. The 1978 revisions also touched on the broker relationship in the section on causes for suspension or revocation of a license.

Section 1454: Causes for suspension or revocation of license set out in part that a license may by suspended or revoked for:

“(8) Acting in the dual capacity of agent and undisclosed principal in any transaction;

(13) Negotiating a sale, exchange, or lease of real estate directly with an owner or lessor if he knows that such owner has a written outstanding contract in connection with such property granting an exclusive agency or exclusive right to sell to another broker;

(19) Acting for more than one party in a transaction without the knowledge of all parties for whom he acts;

(25) Failure of a licensee to make clear for which party he is acting and if being compensated by more than one party, failure to divulge this fact to all parties; ...

These rules operate under the presumption that a broker is representing only one party to the exclusion of all others. The above rules require that if that is not the case, that fact must be divulged.

In 1997, the legislature addressed this conflict. In that year the legislature enacted a revision to the Civil Code (not the License Law) by adding Chapter 4, Sections 3891-3899. This chapter is titled “Agency Relations in Real Estate Transactions,” our so called dual agency rules. In this Act, the legislature recognized ‘dual agency” and laid the ground work for a licensees duties in that circumstance. The Act is reproduced in whole as follows:
§3891. Definitions:

(1) "Agency" means a relationship in which a real estate broker or licensee represents a client by the client’s consent, whether express or implied, in an immovable property transaction.

(2) "Broker" means any person licensed by the Louisiana Real Estate Commission as a real estate broker.

(3) "Brokerage agreement" means an agreement for brokerage services to be provided to a person in return for compensation or the right to receive compensation from another.

(4) "Client" means one who engages the professional advice and services of a licensee as his agent.

(5) "Commission" means the Louisiana Real Estate Commission.

(6) (a) "Confidential information" means information obtained by a licensee from a client during the term of a brokerage agreement that was made confidential by the written request or written instruction of the client or is information the disclosure of which could materially harm the position of the client, unless at any time any of the following occurs:

(i) The client permits the disclosure by word or conduct.
(ii) The disclosure is required by law or would reveal serious defect.
(iii) The information becomes public from a source other than the licensee.

(b) Confidential information shall not be considered to include material information about the physical condition of the property.

(c) Confidential information can be disclosed by a designated agent to his broker for the purpose of seeking advice or assistance for the benefit of the client.

(7) "Customer" means a person who is not being represented by a licensee but for whom the licensee is performing ministerial acts.
“Designated Agency” means the agency relationship that shall be presumed to exist when a licensee engaged in any real estate transaction, except as otherwise provided in this Chapter, is working with a client, unless there is a written agreement providing for a different relationship.

“Designated agent” means a licensee who is the agent of a client.

“Dual agency” means any agency relationship in which a licensee is working with both buyer and seller or other landlord and tenant in the same transaction. However, such a relationship shall not constitute dual agency if the licensee is the seller of the property that he owns or if the property is owned by a real estate business of which the licensee is the sole proprietor or agent. A dual agency relationship shall not be construed to exist in a circumstance in which the licensee is working with both landlord and tenant as to a lease which does not exceed a term of three years and the licensee is the landlord.

“Licensee” means any person who has been issued a license by the commission as a real estate salesperson or a real estate broker.

“Ministerial acts” means those acts that a licensee may perform for people that are informative in nature. Examples of these acts include but are not limited to:

(a) Responding to phone inquiries by persons as to the availability and pricing of brokerage services.
(b) Responding to phone inquiries from a person concerning the price or location of property.
(c) Conducting an open house and responding to questions about the property from a person.
(d) Setting an appointment to view property.
(e) Responding to questions from persons walking into a licensee’s office concerning brokerage services offered or particular properties.
(f) Accompanying an appraiser, inspector, contractor or similar third party on a visit to a property.
(g) Describing a property or the property's condition in response to a person’s inquiry.
(h) Completing business or factual information for a person represented by another licensee on an offer or contract to purchase.
(i) Showing a person through a property being sold by an owner on his or her own behalf.

(j) Referral to another broker or service provider.

(13) “Person” means and includes individuals and any and all business entities, including but not limited to corporations, partnership, trusts and limited liability companies, foreign or domestic.

(14) “Substantive contact” means that point in any conversation where confidential information is solicited or received. This includes any specific financial qualifications of the consumer or the motives or objectives in which the consumer may divulge any confidential, personal, or financial information, which, if disclosed to the other party to the transaction could harm the party’s bargaining position. This includes any electronic contact, electronic mail, or any other form of electronic transmission.

*Added by Acts 1997, No. 31, §1, eff. March 1, 1998.*

§3892. Relationships between licensee and persons

Notwithstanding the provisions of Civil Code Articles 2985 through 3032 or any other provisions of law, a licensee engaged in any real estate transaction shall be considered to be representing the person with whom he is working as a designated agent unless there is written agreement between the broker and the person providing that there is a different relationship or the licensee is performing only ministerial acts on behalf of the person.

*Added by acts 1997, No. 31, §1, eff. March 1, 1998.*

§3893. Duties of licensees representing clients

A. A licensee representing a client shall:

(1) Perform the terms of the brokerage agreement between a broker and the client.
(2) Promote the best interests of the client by:

(a) Seeking a transaction at the price and terms stated in the brokerage agreement or at a price and upon terms otherwise acceptable to the client.
(b) Timely presenting all offers to and from the client, unless the client has waived this duty.
(c) Timely accounting for all money and property received in which the client has, may have, or should have had any interest.

(3) Exercise reasonable skill and care in the performance of brokerage services.

B. A Licensee representing a client does not breach a duty or obligation to the client by showing alternative properties to prospective buyers or tenants or by showing properties in which the client is interested to other prospective buyers or tenants.

C. A licensee representing a buyer or tenant client does not breach a duty or obligation to that client by working on the basis that the licensee shall receive a higher fee or compensation based on a higher selling price.

D. A licensee shall not be liable to a client for providing false information to the client if the false information was provided to the licensee by a customer unless the licensee knew or should have known the information was false.

E. Nothing in this Section shall be construed as changing licensee’s legal duty as to negligent or fraudulent misrepresentation of material information.

F. Nothing in this Chapter or in Chapter 17 of Title 37 of the Louisiana Revised Statutes of 1950 shall be construed as to require agency disclosure with regard to a lease that does not exceed a term of three years and under which no sale of subject property to the lessee is contemplated.

Added by Acts 1997, No. 31, §1, eff. March 1, 1998
§3894. Licensee’s relationship with customers

A. Licensees shall treat all customers honestly and fairly and when representing a client in a real estate transaction may provide assistance to a customer by performing ministerial acts. Performing those ministerial acts shall not be construed in a manner as to form a brokerage agreement with the customer.

B. A licensee shall not be liable to a customer for providing false information to the customer if the false information was provided to the licensee by the licensee’s client or client’s agent and the licensee did not have actual knowledge that the information was false.


§3895. Termination of agency relationship

Except as may be provided in a written agreement between the broker and the client, neither a broker nor any licensee affiliated with the broker owes any further duties to the client after termination, expiration, or completion of performance of the brokerage agreement, except to account for all monies and property relating to the transaction and to keep confidential all confidential information received during the course of the brokerage agreement.


§3896. Compensation; agency relationship

The payment or promise of payment of compensation to a broker is not determinative of whether an agency relationship has been created.


§3897. Dual agency

A. A licensee may act as a dual agent only with the informed written consent of all clients. Informed consent shall be presumed to have been given by any client who signs a dual agency disclosure form prepared by the commission pursuant to its rules and regulations. The form prepared by the commission shall include the following language:
“What a licensee shall do for clients when acting as a dual agent:

(1) Treat all clients honestly.

(2) Provide information about the property to the buyer or tenant.

(3) Disclose all latent material defects in the property that are known to the licensee.

(4) Disclose financial qualification of the buyer or tenant to the seller or landlord.

(5) Explain real estate terms.

(6) Help the buyer or tenant to arrange for property inspections.

(7) Explain closing costs and procedures.

(8) Help the buyer compare financing alternatives.

(9) Provide information about comparable properties that have sold so both clients may make educated decisions on what price to accept or offer.”

B. A licensee shall not disclose to clients when acting as a dual agent:

(1) Confidential information that the licensee may know about either of the clients, without that client's permission.

(2) The price the seller or landlord will take other than the listing price without the permission of the seller or landlord.

(3) The price the buyer or tenant is willing to pay without the permission of the buyer or tenant.

C. The written consent required in Subsection A of this Section shall be obtained by a licensee from the client at the time the brokerage agreement is entered into or at any time before the licensee acts as a dual agent.

D. No cause of action shall arise on behalf of any person against a dual agent for making disclosures allowed or required by this Section, and the dual agent does not terminate any agency relationship by making the allowed or required disclosures.

E. In the case of dual agency, each client and licensee possesses only actual knowledge and information. There shall be no imputation of knowledge or information among or between the clients, brokers, or their affiliated licensees.
F. In any transaction, a licensee may without liability withdraw from representing a client who has not consented to a disclosed dual agency. The withdrawal shall not prejudice the ability of the licensee to continue to represent the other client in the transaction or limit the licensee from representing the client in other transactions. When a withdrawal occurs, the licensee shall not receive a referral fee for referring a client to another licensee unless written disclosure is made to both the withdrawing client and the client that continues to be represented by the licensee.

G. A licensee shall not be considered as acting as a dual agent if the licensee is working with both buyer and seller, if the licensee is the seller of property he owns, or if the property is owned by a real estate business of which the licensee is the sole proprietor and agent. A dual agency shall not be construed to exist in a circumstance in which the licensee is working with both landlord and tenant as to a lease which does not exceed a term of three years and the licensee is the landlord.


§3898. Subagency

Subagency can only be created by a written agreement. A licensee is not considered to be a subagent of a client or another broker solely by reason of membership or other affiliation by the broker in a multiple listing service or other similar information source.

_Added by Acts 1997, No. 31, §1, eff. March 1, 1998._

§3899. Vicarious liability

A client shall not be liable for the acts or omissions of a licensee in providing brokerage services for or on behalf of the client.

_Added by Acts 1997, No. 31, §1, eff. March 1, 1998._

In sum, what this Act did was redefine the old broker notion of “intermediary.” It clearly sets out duties to the client, including limitations, and through the definition of “ministerial acts,” seeks to provide guidance on dealing with third parties. Last, and importantly, this relationship can exist only if there is informed written consent of all parties. Informed consent is presumed when the dual agency disclosure form prepared by the Real Estate Commission is used.
**Case Studies**

The following are a series of actual Louisiana cases to illustrate the principles in the preceding materials.

**Case 1**

**Facts:**

On June 2, 1978, O purchased a house from HUD without warranty for $11,500. O then sold the property to X on September 8, 1978 for $30,000. O’s son, a licensed real estate broker, acted as the agent in both transactions. X discovered the house had foundation problems in the form of a cracked slab after they purchased the house.

O purchased the house as a result of a HUD advertisement that stated the foundation failure. After she purchased the house and up until the time that the X bought it, O and her son renovated the property. X made several visits to the home during this time, but did not notice the foundation failure due to the constant clutter and debris.

**Issue:**

Whether defendant, O’s son, as broker, can be held liable as an “owner in fact” for a redhibitory defect

**Held:**

He cannot be held liable under a redhibitory defect claim, but could be liable under other theories.

**Discussion:**

Redhibitory actions can only exist between a buyer and a seller. A person must have some legal ownership that can be attributable to him in order to be considered a seller. Son acted only as the broker and agent in both sales of the property. O was the record owner of the property at the times of the sales, and she signed the sale agreements. Son was neither a seller nor an owner and could not be liable under a redhibitory action.

Other theories that X tried to find the son liable under were joint venture, fraud, liability, and negligent misrepresentation. The law of partnership governs joint ventures in LA. “In order to form a valid joint venture in Louisiana, the following elements are required:
(A) All parties must consent to formation of a partnership. LSA-C.C. art. 2805.

(B) There must be a sharing of losses of the venture as well as the profits, LSA-C.C. arts. 2811, 2813, 2814.

(C) Each party must have some proprietary interest in, and be allowed to exercise some right of control over, the business. The facts in the present case do not show any of the elements exist, and thus son cannot be held under joint venture.

Legal fraud requires two elements: intent to defraud and actual or probable damage, which must be proved by clear and convincing evidence. Son is not liable for fraud because the X failed to show that an intentional misrepresentation occurred.

Son is liable under the theory of negligent misrepresentation based on his knowledge of the house, its history and his subsequent failure to inform X of this knowledge. Realtors have the specific duty to communicate accurate information to the seller or purchaser, or both when the circumstances justify it. Because the nature of real estate usually involves significant expenditures and purchasers in a competitive marketplace are forced to move quickly, it is especially important to convey accurate information when realtors represent both the buyer and the seller. Both parties are relying on his honesty, access to information, knowledge, and expertise. By failing to disclose the vital piece of information, Son caused X to suffer losses. Son is liable in damages to X. X was entitled to $6,500, the difference between the sale price and the fair market value of the house at the time of the sale, as well as $2,500 for repairs to other parts of the house that were damaged due to the cracked foundation.

Moral:

A Broker can be liable to a third party by negligent misrepresentation.

Case 2

Facts:
Seller employed Broker as real estate brokers to find a purchaser for his bar and restaurant. Broker secured and a Purchaser, who signed an agreement to purchase the business for $12,000. The agreement stated that the sale would be consummated two days later and subject to the bulk sales law. Purchaser gave the Broker a deposit of $3500. With Purchaser present, the Broker gave Seller a $1000 check as representation of the merchandise currently in the business establishment. Purchaser neither objected nor protested this payment. Purchaser occupied and began operating the business even though the act of sale was not authentically executed pursuant to the bulk sales law. A creditor of Seller seized the entire business. Purchaser negotiated with the creditor and took three truckloads of merchandise from the premises.

Issue:
Whether Purchaser is entitled to a refund of the $1,000 given to Seller, and, if so, the party or parties liable therefore.

Analysis:
Because Broker brought Seller and Purchaser together into a transfer of business agreement, Broker became their joint agent. As such, they were bound and obligated to treat both parties with equal fairness, trust, and fidelity. Purchaser was present and did not object when Broker issued a check to Seller. Furthermore, he went into possession and operated the business. Purchaser’s actions resulted in a ratification of Broker’s act of paying Seller $1,000. When an agent is unauthorized to act, the client can ratify the contract by accepting the benefits that arise from the contract and not immediately rejecting the contract upon learning of its existence.

Moral:
A Broker can become a joint agent by its actions.
Case 3

Facts:

Real estate Broker is trying to recover a 6% commission and attorney’s fees as a result of the Purchaser defaulting in a contract for the sale of real estate for which he was a Broker. The agreement was conditioned upon Purchaser being able to obtain a mortgage through a lending agency. If he was unable to do so, the Seller would grant Purchaser a loan if he had good credit. Purchaser was unable to get a loan. When he told Broker, Broker insisted that he pay the 10% deposit that was a part of the purchase agreement or he would be considered in default. The Seller did not put Purchaser in default; he sold the property to someone else and used Broker as the agent, who received his normal commission for making the sale.

Analysis:

Where terms were conditioned upon the ability of Purchaser to obtain a mortgage through a lending agency or vendor financing the mortgage if Purchaser’s credit rating was good, the only way Broker could receive his commission from Purchaser would be if Purchaser “had failed, in bad faith, to obtain a loan from any lending agency, or had refused to take title from the vendor with a vendor’s lien and mortgage securing the unpaid part of the purchase price.” A purchase of an immovable contingent on the ability of the purchaser to secure a loan to finance the purchase is a contract subject to a suspensive condition. If the purchaser is unable to receive a loan through no fault of his own, he is released from the agreement and entitled to return of his deposit. When a vendor hires a real estate broker to sell his property, the legal relationship between the two is that of principal and agent. The broker also becomes agent or mandatory of the potential purchaser that he finds. Based on the terms in the purchasing agreement, Broker was under fiduciary duty to request the vendor to finance the purchase when he had failed to find a loan through an agency. Broker was not entitled to commission from Purchaser where Broker did not inform vendor of Purchaser’s un-success in obtaining a loan through an agency and failing to make Purchaser’s request of the vendor supplying the loan.

Moral:

Broker owes a fiduciary duty to a third party Buyer.

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Case 4

Facts:

In 2001, Seller decided to sale their tract of land in Tangipahoa Parish. They found a prospective purchaser, who offered to purchase the land for $52,000. This offer was reduced to an “Agreement to Purchase or Sale,” which was signed immediately by the Buyer. The offer stipulated that it had to be accepted by December 11 at 3:00 p.m. and that any changes in this deadline should be reduced to writing and signed by both parties.

Seller did not meet with their agent to sign the papers as planned on December 11. Still wanting to go through with the deal, their agent created an “addendum” that stipulated that the purchase agreement must be signed by December 13 at 3:00 p.m. The Purchaser signed at 11:00 and gave the documents to his agent. The Seller’s agent picked them up after 3:00 p.m. The Seller received the documents at 4:48 p.m. on December 13, and the wife refused to give the agreement back to the agent after receiving it. It was received after the deadline and apparently the Seller had changed their mind about selling the property.

Analysis:

The purchaser sued the Seller in hopes of enforcing the purchase agreement. The court determined that it was the purchaser who made the original offer to buy the property. The Seller, who did not sign the purchase agreement by the initial deadline, then made a counteroffer when they had their agent draw up the addendum. The addendum required the papers to be signed and delivered to the Seller by 3:00 p.m. on December 13. The court ruled that since they were received at 4:48 p.m., which was after the 3:00 p.m. deadline, there was no valid transaction and that the purchase agreement could not be enforced. 2003-2424 (La. App. 1 Cir. 10/29/04), 897 So. 2d 68

Moral:

Brokers should follow the rules of offer and acceptance.
Case 5

Facts:

A business specialized in buying, remodeling, and reselling houses. This business contacted a local real estate agent, who showed them the local properties available in the Multiple Listing Services (MLS) list. The business picked out a house in a local subdivision, and the house was listed as 2,132 square feet of living area. The business executed a purchase agreement for the home, which contained a clause relieving any liability from the agent and seller for any inadvertent inconsistencies or omissions. The purchase agreement also allowed the buyer ten days to inspect the house before executing the sale. The business, electing not to have the house inspected or appraised, purchased the home for $148,000. They hoped to renovate and resell it for $181,220, or $85 per square foot of living area.

After purchasing the house, the business came to find that the MLS square footage listing was incorrect. The house actually had 1,861 square feet of living area. The business renovated the house for $14,000 and sold it for $155,000.

Analysis:

Since the transaction resulted in a net loss, the business filed suit against the real estate agent and her agency for negligently misrepresenting the house in order to sell it. The court realized that the agent did have a fiduciary duty to the purchasers. If the agent made any intentional misrepresentations, she would be liable to the business. However, the court found that it was common practice for agents to rely on the MLS listings for things like measurements. The agent did not intentionally deceive the purchasing business. Also, the business had a ten day window to have the house measured and appraised but elected not to do so. Upon these findings, the agent and agency were not liable to the purchasing business for its losses. 2007-1373 (La. App. 1 Cir. 7/17/08), 993 So. 2d 228

Moral:

A Broker’s fiduciary duty means that an intentional act violates that duty.
Case 6

Facts:

S sold a house to M, which was listed with Broker for $112,000. The property was to be sold in an “as is” condition. The act of sale did not include any reference to the “as is” provision that was in the purchase agreement. After the sale, M sent a carpenter to the property, the carpenter informed them that problems may exist with the foundation of the house. A foundation expert inspected the house and the foundation and informed M that the house needed a new foundation, replacement of the sills, and leveling of the house. M had this work completed and then sued S for a reduction in the purchase price. S had knowledge of the rotted sill and informed Broker of this defect. Broker confirmed this and stated he informed the president of M about the sill; however, M denied that he received this information.

Analysis:

“A real estate broker or salesperson (agent) is not considered to be an agent within the purview of the mandate provisions contained in Article 2985 et seq. of the Louisiana Civil Code.” As a result, knowledge cannot be imputed to M on the sole basis that its real estate agent was aware of the problem. Broker owed a duty to disclose to M any material defects about which he knew. Because the agent failed to do this thus leaving M unaware of the defect, S should be allowed to recover from Broker the amount paid to M for the sill replacement. Prior to the act of sale, M could have discerned from simple inspection that a problem existed with the foundation of the house based on the several apparent defects in the structure of the property. Because it failed to do so, M cannot recover from S the cost of the foundation replacement.

419 So. 2d 981, 983 (La. Ct. App. 1982)

Moral:

A broker is not a mandatary.
Environmental Hazards

Course Objectives

As a result of having participated in this course learners will:

- Identify The basic environmental hazards found in Louisiana that a licensee should be aware of in order to competently inform consumers
- Describe the common locations, warning signs (if any), characteristics and causes (if known) of the various hazards most commonly found in Louisiana
- Explain the common liability issues (if any) arising from environmental laws

Introduction

Section 41 of the mandatory Louisiana Residential Property Disclosure Form requires sellers to disclose to potential buyers the presence of asbestos, formaldehyde, radon gas, chemical storage tanks, contaminated soil, contaminated water, toxic mold, mold/mildew, pets, electromagnetic fields, crystal meth disclosure, other adverse materials or conditions and contaminated drywall/sheetrock. It is reproduced below.

<table>
<thead>
<tr>
<th>Louisiana Residential Property Disclosure Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>(41) Does the property or any of its structures contain any of the following? (Check all that apply and provide the nature and frequency at the end of this section.)</td>
</tr>
<tr>
<td>Asbestos □ Y □ N □ NK</td>
</tr>
<tr>
<td>Radon gas □ Y □ N □ NK</td>
</tr>
<tr>
<td>Contaminated soil □ Y □ N □ NK</td>
</tr>
<tr>
<td>Hazardous waste □ Y □ N □ NK</td>
</tr>
<tr>
<td>Mold/Mildew □ Y □ N □ NK</td>
</tr>
<tr>
<td>Electromagnetic fields □ Y □ N □ NK</td>
</tr>
<tr>
<td>Other adverse materials or conditions □ Y □ N □ NK</td>
</tr>
</tbody>
</table>

The addition of this portion of the property disclosure form is an indication of the importance of disclosing the presence of the listed environmental hazards.

Environmental hazards are ubiquitous; they are present in every square inch of the planet and are not limited to Louisiana. Because this course is intended for Louisiana’s real estate licensees, in this course we will discuss only those environmental hazards found in Louisiana.
There are a number of environmental hazards that are prevalent only in specific parts of the state or only in specific types of property. Others are as likely to occur in Monroe as they are in Chalmette or any other location in the state.

Licensees are neither required nor expected to have technical knowledge of environmental hazards. They are expected to require sellers to complete the mandatory Property Condition Disclosure form and to recognize environmental hazards and to be the source of the source of authoritative information for their customers and clients.

**Air Contaminants**

**Formaldehyde**

Best known for its role in embalming and tissue preservation, formaldehyde is present in low levels in all homes. Formaldehyde is an effective preservative because it quickly kills bacteria or fungi that might otherwise begin the process of decomposition.

While a high concentration of formaldehyde is toxic and can cause cancer, low levels in interior air cause allergic reactions to many persons. Formaldehyde resins are used to make textiles crease-resistant and can be found in everything from curtains to sheets and clothing. These resins are also used in dishwashing liquids, fabric softeners, carpet cleaners, glues, cardboard and paper products (including wallpaper) and certain latex paints. They are also used in products intended to be used on the body, such as cosmetics (including nail polish and nail hardener) and paper products (facial tissues, napkins and paper towels).

Formaldehyde is also an ingredient in a wide variety of resins used to make permanent adhesives for plywood and carpeting, causing it to be present in furniture and building materials (particularly those made with pressed wood products) and certain molded plastics. These products release small quantities of formaldehyde into inside and outside air, as do certain insulating foams that are no longer in use in new home construction but that may be present in older homes.

When released into air inside a building, allergic persons respond with a variety of symptoms from burning, itchy eyes to nausea and vomiting. When there are large amounts of formaldehyde released into the interior air, or if an individual is very sensitive, serious illness can result.

Burning of most materials also releases formaldehyde, so fireplaces, wood stoves and smoking can also be a source of indoor formaldehyde. Adding plywood or other materials of which formaldehyde is a part releases a sufficient quantity of formaldehyde into interior to cause symptoms in most persons.
It is possible to minimize the effects of formaldehyde within buildings by using ventilation, sometimes with fans to aid the process and sealing the materials with a protective coat (where possible). It is probably impossible to eliminate formaldehyde and its ill effects, but very simple (in many cases) to minimize its intrusion into buildings.

Radon Gas

Radon gas is present beneath the soil the entire planet. It is a significant danger to humans when it rises from beneath the soil and enters the inside air of buildings. Whether or not radon gas will rise to the surface and cause health problems depends on the composition of the soil. Sandy soil allows radon gas to rise; heavy, clay soil does not.

The soil in Louisiana is, for the most part, of the heavy clay variety through which radon gas does not percolate. Persons who fear the intrusion of radon gas into their buildings may purchase radon detection kits. They are widely available from a number of sources online and are relatively inexpensive.

Other Air and Soil Contaminants

We will not closely examine the issue of air or soil contaminants. That is not because they are not present, but because the specific contaminants are subject to change at any time. We will instead strongly advise licensees to become very familiar with any sources of air and soil contaminants in their market areas and to be aware that they may change at any time.

Airborne and soil contaminants may be released by industry, agriculture, military or mining (including drilling for oil) sources. The directions they take once released into the air are dependent on air currents. It is not possible for real estate licensees to prevent these releases nor can they order cleanups. All that real estate licensees can do is to be aware of the possibility of such releases and, when appropriate, warn potential buyers of the potential for contaminants.

Superfund/Hazardous Waste and Cleanup Sites

Superfund

There are numerous federal and state laws that address the problem of environmental protection. The Environmental Protection Agency (EPA) to work with other agency was created in 1970 to oversee and implement the bewildering number of laws designed to protect the environment. It is mentioned in this course for the simple purpose of preparing licensees to answer any questions customers and clients may ask regarding the Superfund.
Perhaps the most famous of the environmental protection laws is the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). It was created in 1980 and established a fund of $9 billion (known as the Superfund) to be used to clean up uncontrolled hazardous waste sites and respond to spills of hazardous materials when responsible parties cannot be found.

Although $9 billion seemed, in 1980, to be an amount equal to any environmental challenge, in fact it is woefully insufficient. The inadequacy of the Superfund has led to prolonged and acrimonious court and media battles as the EPA seeks to force parties they label as responsible and the parties try just as energetically to deny responsibility.

Of major importance to real estate licensees is the provision under CERCLA that landowners are liable when a release or the threat of a release of hazardous materials has occurred on their property. In these events, the property owner can be held responsible for the cleanup, even when the contamination is the result of the actions of other parties.

This liability extends beyond the boundaries of the landowner’s property to include any contamination of neighboring properties. A landowner who has innocently purchased a property that is the source of the contamination may seek reimbursement from previous owners, but the cleanup is the responsibility of the owner at the time the contamination is discovered.

Such cleanups can cost great amounts and have been known to financially ruin property owners who purchased property with no knowledge of the contamination. It is not difficult to imagine the feelings of these “innocent” owners toward the real estate licensees who sold them the property without first investigating for the presence of hazardous waste contamination.

In Louisiana there is a great deal of industrial activity, oil production and relatively large agricultural production. These industries provide needed jobs for the population and are the source of much of the tax base that keeps the state’s services running. Hazardous wastes also are often the companions of these industries.

Some licensees are of the mistaken belief that the cleanup of any hazardous wastes on properties will be financed by the Superfund. Although it may be true that some of the costs will eventually be reimbursed to the party who paid for the cleanup, the time element makes depending on Superfund almost totally impractical, particularly in the timeline of the typical residential or small commercial or industrial property.
Illegal dumping affects Mahoning, rivers leading to Gulf of Mexico

Posted by Rachel Lundberg in Audio, Community, Fracking, WYSU

Things had been looking up for Youngstown, Ohio’s long-polluted Mahoning River until last week. That’s when an Ohio company intentionally dumped up to 60,000 gallons of fracking waste into one of its tributaries.

Rachel Lundberg brings us the story of one man, his river and the community fighting for revival.

Lauren Schroeder, a retired biology professor, is in his 45th year of studying and trying to clean up the Mahoning River.

*The water quality today in the Mahoning River is much improved.*

The Mahoning snakes through the Rust Belt city of Youngstown, Ohio.

For almost 100 years, Youngstown’s former steel companies would dump waste into the Mahoning River. The steel giants caused so much damage that there’s still a ban on swimming, wading, fishing, any contact with about 30 miles of the river.

*The river was once the most polluted streams in the entire United States. Sometimes the temperature in the river often exceeded 100 degrees Fahrenheit.*

Industry again threatens the river. But this time, instead of steel companies, it’s gas drillers. The communities surrounding Youngstown are rich with gas and oil reserves and the industry is making itself at home.

*This is a bad omen that people will dump their waste to avoid paying the costs of proper disposal.*

Dan Mamula, manager of the Mahoning River Corridor Initiative, says he wants the industry well monitored and held accountable.

*Right off the get-go. It has to be known that we will not tolerate shoddy business practices.*

Schroeder thought the days of dumping were over.

*One incident of the spill itself will not have very much impact on the river, but if they occurred frequently that would have a degrading effect.*

And these waters won’t be the only ones threatened. Dumping into the Mahoning means pollution is carried to the Beaver, the Ohio and the Mississippi rivers and eventually to the Gulf of Mexico.

*Anybody living along there would be impacted by what we dump in the river in Ohio.*

This is just another setback in Youngstown’s struggle to bounce back from the steel crisis of the 1970s. State officials continue to investigate the incident.

*It’s a tragedy and very disheartening.*

Caitlin Cook contributed to this story. Reporting for TheNewsOutlet.org, I’m Rachel Lundberg.

Copied from TheNewsOutlet.org March 20, 2013
Hazardous (Toxic) Waste Disposal Sites

**Landfills**

Hazardous waste disposal sites are located throughout Louisiana. The nature of the hazardous wastes varies from medical to radioactive wastes, and disposal of them also varies. The most widely known type of disposal sites is what is called landfills.

A landfill is basically a hole, usually very large, that is lined with either clay or a synthetic liner to prevent leakage of waste material into the water supply. A system of underground drainage pipes is installed to monitor leakage and leaching.

This feature of landfills is noteworthy in Louisiana for two reasons: the water table is generally very high, and, water is abundant in the soil. Abundant water in the soil encourages leaching, so leaks and leaching are of greater danger in our state than they would be in states with drier soil conditions.

Once the landfill hole has been dug and lined with leak-prevention materials, the waste is laid on the bottom and a layer of topsoil is then compacted onto the waste. This layering is repeated until the landfill is full and then some, with layers often a hundred feet or more above ground level.

When full, the landfill is then “capped.” A cap of two to four feet of soil is laid over the top of the landfill and grass is planted to improve its appearance. Landfills are not suitable for building on because of the instability of the soil, but are often used as parks and other recreation areas, such as golf courses. There are 76 landfills in Louisiana, most of which are almost certainly used for the disposal of household garbage (this supposition is supported by data showing the majority are located in or near the most populated, therefore, greatest household garbage generating areas of the state). Although landfills are no longer in common use in Louisiana for disposal of toxic waste, there are probably a number of older landfills in which industrial toxic wastes are buried.

**Dump Sites**

Even earlier, it was not unusual for wastes (toxic or otherwise) to simply be dumped into convenient holes in the ground or bodies of water. Household water drawn from areas near these
older dump sites or older landfills may be contaminated by toxic materials. This is one of the reasons that water in public and private water production plants is constantly tested, and that well water must be tested in residential properties that have on-site wells for household water.

Many dump sites are illegal, undocumented or both. Many dump sites intended for household garbage are being contaminated by dumping batteries, paint or defunct electronic gadgets along with banana peels and chicken bones.

The locations of many dump sites have been lost to history. This is not a problem in the case of chemicals that can relatively easily be broken down and returned harmlessly to the earth. Other chemicals such as mercury, toluene and benzene will remain harmful for longer periods of time, for all practical purposes forever, unless steps are taken to remove and destroy them.

Incinerators

Incinerators are often used to dispose of toxic waste in Louisiana as well as in most other states. Compared to landfills, incinicators are more efficient, more effective and much easier for state authorities to access and inspect.

Incinerators must be permitted by the state and the permit process is involved, highly technical and requires that operators be educated in incinerator manufacture, installation and operation. Through the incineration process, any wastes that can be burned away are and the escaping gases are either captured (if harmful) or released into the atmosphere where they combine with atmospheric gases to become harmless. Captured harmful gases are further treated or sent to deep earth storage facilities.

Real Estate Implications

Incinerators are considered the safest of the types of toxic waste generators in use in Louisiana, but no method is one hundred percent fool proof. It is therefore advised that any licensee who sells property in the vicinity of known hazardous waste treatment or destruction facilities become very aware of water and air quality.

FYI, brownfields are defunct, derelict or abandoned commercial or industrial sites, many of whom are suspected of containing toxic wastes.
A real estate licensee has found the perfect listing: a secluded four acres easily accessible to schools, churches and shopping with trees and in the back yard, a pond. There are ducks floating on the pond and, when the sun is at just the right angle, the water has a beautiful iridescent sheen to it. The owners are very motivated to sell and move out of state. They have indicated that they will take much less than the fair market value the licensee suggested. Within this scenario, which are the red flags that might indicate toxic waste intrusion onto this property?

a. Four secluded acres, ducks  
b. Iridescent water and motivated sellers  
c. Sellers willing to take less and moving out of state  
d. Both b and c

The answer is d. An iridescent sheen on sill water often indicates intrusion of petrochemicals; sellers willing to take less is always a red flag of something; sellers anxious to move out of state may be trying to avoid being sued by future owners.

Asbestos

Asbestos is a naturally occurring material that was once widely used in building materials because it is fire-resistant and has some insulating properties. It was a component of thousands of building materials found that were used in construction of residential structures. Because it is also relatively inexpensive, asbestos insulation, siding and roofing were very popular for residences and public buildings such as schools.

Asbestos is a highly friable material. This means that as it ages its fibers very easily break down into tiny filaments can appear to be dust and that are easily breathed into the lungs. The result is serious and deadly lung diseases that can take decades after the material is inhaled to appear.
Illnesses and ultimately deaths of workers in manufacturing processes using asbestos drew attention to the dangers of breathing in asbestos fibers. The lung diseases associated with inhalation of asbestos are particularly debilitating and result in very difficult illnesses and deaths.

There are four main diseases associated with inhalation of asbestos fibers: mesothelioma, a form of cancer affecting the lung linings; other asbestos related lung cancer; asbestosis, a non-malignant scarring of the lungs and non-malignant pleural disease (a diffused thickening of pleural tissues and pleural plaques).

In 1978 use of asbestos-containing materials (ACMs) was banned for all construction. There are still numerous properties, many of them residential, with asbestos siding and insulation. In Louisiana the humid climate has destroyed many of the roofs held together with asbestos fibers.

When an asbestos-containing roof or siding or insulation has to be removed from a commercial or government building, it must be removed using strict guidelines for removal and destruction of ACMs. The act of removal releases asbestos filaments into the air (filaments are also released in the course of normal wear and tear, just in smaller amounts and over a longer period of time). The removal process requires state-licensed technicians and specially sealed environments. Improper removal procedures will increase the contamination of air within a structure, thus increasing the danger to residents.

An alternative process is known as encapsulation. In the encapsulation process the disintegrating asbestos is sealed off using special sealing materials so that broken filaments cannot escape. In certain circumstances, encapsulation may be preferable to removal, but the property owner must periodically monitor the encapsulated asbestos to be certain that there are no escaping filaments. An effective encapsulation almost always requires professional asbestos remediators.

During the listing process, sellers indicate on the property condition disclosure form that their house does have asbestos siding. The siding is in excellent shape, and they ask their designated listing agent if it would be acceptable to paint a fresh coat over the siding rather than hire a pricy professional to remove it. The designated listing agent agrees that a new coat of paint will eventually be made but that first
a. A special sealer must be applied
b. A painter with special protective clothing must be hired
c. An inspection should be made
d. All of the above

The correct answer is d. There are special sealing materials available that are specific to the job (siding, roofing, pipes, etc.). These materials are widely available. When the job is being done, the workmen should wear protective suits that include canister masks. Inspections should be made before and after the job is done.

Lead

Lead hazard is most commonly thought only to be from lead based paint. However, in older buildings there may remain lead water pipes that can cause water contamination from lead. It is wise to be aware of the danger from lead water pipes, but licensees will much more often encounter lead paint in older buildings in Louisiana. Lead paint is also found on older, painted furniture and some antique toys. This is good information to know, but not of particular concern in the business of listing and selling real estate.

Young children who are more likely to be playing near painted baseboards or window casings and stools are in most danger from the dust residue left when lead-based paint disintegrates as a result of age or when it is removed. Children tend to disregard the need to wash their hands after playing on floors or at windows, etc. and thus carry lead dust into their mouths with food or on toys touched by their hands and later placed in their mouths.

Lead from paint or other sources can result in damage to the brain, nervous system, kidneys and blood. The results range from mental retardation to death.

Lead was used as a pigment and drying agent or fixative in alkyd oil-based paint. Use of this type of paint was forbidden in a 1978 law. There was no provision in this law to remove existing
lead-based paint, nor would it have been practical to have such a provision. Instead, the law provided that no paint be manufactured using lead.

Real estate licensees should be aware that when listing or selling properties built prior to 1978, it is highly likely that there is either some lead-based paint or some dust from the removal of lead based paint remaining within the structure. Anyone who has ever spent time at a sandy beach knows that sand tends to get everywhere and is often found hiding in very unexpected places. The reason that sand hides so well is that it has very fine texture and is carried by even the smallest whiff of air into crevices and cracks. Paint dust is lighter than sand, and therefore is even more easily carried into even smaller and harder to clean spaces.

In 1996 the EPA and the Department of Housing and Urban Development (HUD) issued the final regulation on lead based paint. The regulation requires the disclosure of the presence of any known lead-based paint hazard to potential buyers or renters. There is no requirement in the federal law for testing for the presence of lead-based paint. Paint inspections are possible that identify the lead content of every different painted surface in a building.

Licensees must provide buyers and renters with the HUD pamphlet, “Protect Your Family from Lead in Your Home.” Licensees must also disclose to renters or buyers any prior test results or knowledge of any lead paint products within a building. Only buyers’ agents who are paid entirely by the buyer are exempt under the federal law. It is recommended that buyers’ agents who are paid entirely by the buyers will make the same disclosures required of all other licensees.

A licensee is showing properties to a buyer who specifically requested not to be shown any residences where there is a likelihood of lead paint danger. The licensee is most likely to avoid this problem by showing houses built after

a. 1968  
b. 1978  
c. 1988  
d. 2008

The answer is b. Federal law banned the use of lead based paint in houses built after 1978.
A lead test kit purchased from  

a. HUD  
b. EPA  
c. Paint store  
d. Kit manufacturer  

The answer is c. Lead test kits for testing paint for the presence of lead can be purchased from most stores that sell paint.  

Mold  

Mold spores are everywhere and require only a food source and moisture to grow and thrive. The food source can be pretty much anything organic and the moisture level found in humid air is sufficient. If you have seen mold growing on inorganic materials such as PVC pipe, the food source is not the pipe but any stray organic material that has deposited on it. Nearly invisible specks of dust can support mold life so long as there is a moisture source.  

Mold and Climate  

In Louisiana, this means that there is significant mold infestation EVERYWHERE it is not prevented or controlled. Even the most rigid standards of household cleanliness fall short of cleaning inside wall cavities and underground pipes. It is thus safe to say that every structure and outdoor environment in the state has some level of mold infestation.  

This is also true in other climates, but in the mostly warm (doesn’t freeze often or for long), moisture-rich, humid climate of the Deep South, mold that is not controlled grows at a much faster rate than in climates where the air is drier. In any climate, leaking water jump starts mold growth and speeds along the formation of giant colonies. In Louisiana many water pipes and most air conditioning conduits are located in attics. Roof leaks are first felt in attics as well. It is always a good idea to check out the attic of a building before listing it for sale.  

Even the water from a tiny leak can foster the growth of molds if left unrepaired. When neglected for years it is not unusual to find what appears to be a mushroom garden in the attic. In extreme cases mold growth can appear to resemble a scale model of a forest, with multiple forms of growths and a myriad of colors all coexisting merrily together.  

Prolonged freezing temperatures in winter help to control some molds, but all are not susceptible to cold. Prolonged freezing temperatures do not occur in our climate, so we do not get even the partial relief from mold growth that occurs in colder climates.
Louisiana and all of the Deep South offer optimal breeding conditions for molds of all types. While the unchecked presence of all molds can cause loss of property value, it is important to understand that not all molds are toxic. Some are just nasty-looking and can be deal breakers if found inside structures, particularly residences.

**Conditions that Foster Mold Growth**

There are a number of commonly seen conditions that practically guarantee there will be bumper crops of mold unless steps are taken to prevent growth. These conditions include:

- Unheated, locked and unventilated buildings left vacant over a winter.
- All buildings with poor ventilation, a particular problem for office buildings with sealed windows
- Buildings with unrepai"red roof leaks
- Buildings with vinyl wallpaper (mold is behind the paper)
- Buildings with synthetic stucco and other materials that do not allow moisture to escape
- Buildings that have flooded and have not had soaked materials removed
- Yards with a thick layer of fallen leaves
- Yards with long undisturbed stacks of wood, bricks, etc.

When these conditions are encountered by real estate licensees a diligent effort should be made to get the property owner to investigate possible mold infestations.

There is no federal or state requirement for mold inspections. In Louisiana owners are required to disclose known mold infestations but inspections are at the option of the buyers. However, for self-protection against possible liability lawsuits it is recommended that real estate licensees take reasonable precautions to find mold infestations in listed properties.

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A licensee is called to list a property that has been vacant for 14 months. All utility services have been cut off for 12 of those months, making it unnecessary to winterize the house. The house has plywood over the windows and doors. On a scale of 1 to 4, where 4 is the most likely, what is the likelihood that there will be mold growing inside the house?

- a. 1
- b. 2
- c. 3
- d. 4
The answer is d. Conditions in this house are prime for mold growth: poor to no ventilation, no light, lots of growth medium and possibly burst pipes caused by water remaining in pipes freezing.

**Black Mold**

Finding black colored mold often will kill a real estate deal, but in fact, not all molds that have black pigmentation are the dreaded toxic black mold. Mold colonies tend to grow vertically as well as horizontally. As the layers increase in vertical growth the original color deepens. If left undisturbed, any mold will tend toward black as the vertical colonization increases, causing multiple layers of mold.

Mold colonies also tend to comingle, so that molds of several different colors will all grow together. The mixture of colors eventually will become a uniform black, a phenomenon well known to anyone who was once a child with a water color set.

There is no way to determine if black-colored mold is actually toxic black mold without testing by a professional laboratory. Kits can be purchased at some hardware stores and online and mailed to labs for testing without any worries that the sample will be altered by any conditions encountered during travels. Non-toxic molds will not be “converted” into toxic mold during shipping, and vice versa.

**Toxic Mold Remediation**

When mold is tested by a professional laboratory and found to be toxic, there is a serious threat to the health of all persons who come into contact with it. Inhalation is the biggest danger. When homeowners who are not professional mold remediators attempt to remove toxic mold by scraping it off surfaces a number of spores sufficient to cause health problems to all persons in the path of breezes that blow over the scrapings.

The person doing the scraping may think a face mask will be sufficient protection, but mold can be inhaled through most masks purchased from a hardware store. Mold spores can also enter the body through the eyes, mouth and any cuts or scrapes in the skin.

Other persons in the area will probably not even have the partial protection of the hardware store mask. The mold spores set free by scraping will also have no trouble finding other places in which to settle, grow and prosper. It is entirely possible for real estate licensees who advise homeowners to scrape off toxic mold before anyone sees it may bring spores home on clothing, equipment, vehicles or their bodies.
A real estate licensee is listing a residence. In the hall bathroom the vinyl flooring has changed from cream-colored to gray, with black around the bathtub and toilet. The licensee tells the owners to install another layer of sheet vinyl over the old floor after applying a layer of sealer to avoid having to disclose this mold infestation. This advice is quickly acted upon by the sellers. The house is sold and the small children of the new owners begin to display asthma symptoms. A mold inspection reveals a serious mold infestation beneath the new bathroom floor. The new owners sue the old owners and the old owners sue the real estate licensee. Did the licensee do anything wrong?

a. No. The licensee did hide the mold, the owners did.

b. Yes. The licensee acted in violation of state mandated disclosure.

The answer is b. The licensee not only advised the owners to hide a deficiency in the property, but gave explicit directions on how to do so and further suggested that the whole incident need not be disclosed.

It is essential for the personal health and well-being of real estate licensees as well as other residents and properties in the area to advise property owners where any black mold is found to immediately obtain a test kit and have the mold tested.

If the test indicates the mold is toxic, a professional mold remediation company should be hired to remove the mold and locate and repair the moisture source that is causing the mold overgrowth.

**Non-Toxic Mold Removal**

Non-toxic mold can be removed from hard surface materials by applying hot water with detergent and chlorine bleach and vigorous scrubbing with a stiff brush. This should not be attempted on porous materials such as imitation stucco or cinder blocks as the water will percolate into the material and increase mold danger.

Once the mold has been removed and the natural material that was its growth medium is completely dried, it should be sanded and sealed with a sealing compound that is readily available from paint or hardware stores.

It is definitely NOT “as good as removal” to simply coat the mold colony with sealing compound. All molds require very little oxygen for survival. Some mold is anaerobic, meaning it does not require any oxygen to live and thrive. The sealing compound will bury the mold, but it
is burying it alive, thus ensuring that the colony will completely penetrate the host on which the colony is located.

While performing mold removal, even of mold known (not just assumed) to be non-toxic, face masks, protective suits and protective glasses should be worn. Even mold that will not kill, paralyze or cause mental deficiencies can pose a problem for individuals who are allergic.

The area in which mold is to be removed should be protected by plastic sheeting. All mold scrapings, wood shavings and sanding dust as well as the protective gear should be placed in this sheeting and tightly sealed before being placed into a garbage collection container.

Burning mold will often release gases into the air that are more harmful than the mold scrapings. There will be removal instructions on the sealing compound container. Those instructions must be followed to the letter if the sealer is to do the intended job.

Real estate licensees should discuss potential mold problems with sellers before the sellers complete the mandatory Property Condition Disclosure Form. They should be made aware that falsifying the form can lead to, at the very least, a fallen-through sale. At worst, there can be grounds for a civil suit based on falsified contract documents. It is much better to avoid either, and very easily done.

A licensee who is listing a residence notices a very sharp and disagreeable odor in the carpet. It seems to be coming from just inside the double doors leading to the patio and back yard. The licensee suggests to the seller that a professional carpet cleaner be called to clean the carpet. After the cleaning, the odor is still very strong. The cleaner is called back. He pulls up the carpet to reveal rotted padding and, beneath that, a huge black stain on the slab. The slab itself stinks.

In order to deliver a house free of mold the seller must

a. Have the mold professionally removed
b. Have the mold professionally removed then sand the slab
c. Have the mold professionally removed, the slab sanded and sealer applied to the slab
d. Have the mold professionally removed, the slab sanded, sealer applied and the walls and ceiling washed with a fungicide

The answer is d. The act of mold removal itself will spread mold spores into the air. A professional cleaner will cover the doorways and windows, possibly even the walls and ceiling, but mold spores are very tiny and easily penetrate even the smallest opening in the coverings.
Mold in the home is usually found

a. In dry, well ventilated areas
b. In moist, poorly ventilated areas
c. Where pets sleep
d. Where children play

**Environmental Hazards from Flooding**

Flooding can cause the disruption of water purification and sewage disposal systems, overflowing of garbage and toxic waste sites, and spillage of chemicals previously stored above ground. Cans of unused or partially used paint, fertilizer, weed killers, etc. are found in most homes and commercial sites. Commercial sites often contain, in addition to these chemicals, others that can pose an even greater threat to human health when discharged into flood waters.

In terms of environmental hazards, backwater flooding that originates in rivers and bayous and moves into populated areas is significantly worse than flooding from excessive clean rainwater or burst pipes.

Mold hazard, on the other hand, is just as great no matter the cause of flooding. Remember, it is the combination of water from any source with a growth medium and mold spores multiplied by the time things stay wet that cause mold problems.
Cleanup

Most property owners are very careful with floodwater during the period of rising water and immediately after a flooding incident when flood waters begin to recede. Unfortunately, constant exposure to potential dangers may cause owners who are performing their own cleanup to become neglectful of their own and others health. Cleanup after flooding is probably one of the most discouraging jobs most of us will ever undertake. The most common result of this (often unintended) neglect is failure to complete the cleanup to the level of disinfection.

There are significant differences among cleaning, repairing and disinfecting. Cleaning removes mud and other debris from the surface. Repairing returns items to working condition. Only disinfection destroys mold and disease-carrying microorganisms.

All cleanup efforts are aided by ventilation. Ventilation can be improved by the use of fans and commercial heating lamps, and if there is electricity and if those items can be found, their use is recommended. Without fans, etc. simply opening the windows and doors will be a big help in preventing infestations of mold and other unwelcome organisms. Opening the structure to outside air also gives a way out to any live creatures that may have entered with the floodwaters, but take care because it can also be a way in for the creatures exiting neighboring properties.

Sewage

A sewage backup will commonly present a serious health hazard mainly caused by bacteria, viruses and parasites. Sewage backup is dangerous due to the many ways it transmits diseases and because it is usually widespread and thus very difficult to impossible to completely cleans up.

Sewage backup hazards are better understood once you learn what, in fact, sewage is; or as it also called raw sewage, sewage sludge, or septic tank waste.

Raw sewage is mainly gray or black water. It usually contains the organic waste and wastewater produced by household and industrial sources. Sewage typically contains everything from soap to solid waste, human excrement, industrial effluent, and debris. It is discharged by drains and sewer lines.

It is not unknown for storm winds to cause a shift in the lid of septic tanks or flood waters to backflow private and public sewer and/or water systems.
There are times when the municipal government must step in and perform a cleanup on the portion of water, sewer and other utilities that are not owned and thus not controlled by individual property owners.

In this country flooding rarely causes serious outbreaks of infectious disease or chemical poisonings. Most cleanup workers suffer only minor gastric or lung problems, all easily treated with readily available medications. These problems are not typically handled by real estate licensees.

What does concern licensees in the aftermath of flooding, is the presence of microorganisms that cause damage to the property or carry an offensive odor. The odor, of course, is the giveaway for the presence of unwanted microorganisms and/or mold.

All odors are particulate. This means that anything we smell is the result of particles that enter our nasal passages and excite our olfactory nerves. Sometimes we can see the particles; other times the particles are microscopic or even sub-microscopic. The size of the particles may or may not influence the pungency of the odor. Some microscopic or sub-microscopic particles carry a big punch that is all out of proportion to their size. Raw sewage is probably one of those.

Microorganisms can cause property damage when their growth causes rot in wood, carpet or other building materials. It is almost impossible to completely remove the aftereffects of flooding from carpet padding, draperies, insulation and other impermanent materials. Even when carefully washed and completely dried, these items may be unusable because of shrinkage, wrinkling, splitting, etc.
An out-of-state bank owns several foreclosed residential properties that are vacant and boarded up when a hurricane hits the area. The buildings are 4-plexes, are located in a low area and are thus the first to flood and the last for the flood waters to recede. Several weeks after the flood waters recede, their property managers are able to access the properties. When the managers open the front doors to the units they are greeted by a terrible odor. Mold is growing on all walls, ceilings and tile or carpet floors. What should the property managers recommend to the bank as a FIRST step?

a. Bulldoze the buildings and sell the lots.
   b. Remove plywood window coverings, carpet and pads and ventilate
   c. Begin rescission proceedings against the former owners
   d. Begin rescission proceedings against the builder/developer of this subdivision

The correct answer is b. Removing plywood and other damaged material is relatively inexpensive and will allow a building inspector to determine if the buildings can be saved.

**Mold After Flooding**

Mold damage to property is almost universal after floods. When there is backwater flooding, mold may be more widespread because the water is usually left standing for so much longer, allowing more mold spores to settle, and because the flood relocates large amounts of organic materials on which the mold can feed.

It is very important to learn as much about the type and severity of past flooding when listing a property. It is also important to learn as much as possible about the steps taken in the cleanup effort.

**Plumbing, Electrical and Natural Gas**

In addition to microorganisms and mold, flooded areas may also harbor plumbing, electrical, natural gas and other fire hazards. These problems can, if not competently repaired, haunt a property for years after the flood event.

Rust and general contamination of electrical service components can result from water having infiltrated electrical boxes during a storm. It may take months or years for the problem to make itself known. It is a very good idea to ask owners of properties with a flood history to describe the work they had done to the electrical service components. If they indicate that the problem
was with the municipality’s equipment, not theirs, ask to see where the government workers made their repairs.

Properties that are located close to sandy ground, such as those on or near the Gulf of Mexico should have electrical boxes and at least some wiring replaced each time a storm surge washes in water higher than the lowest electrical equipment. Sand is in the storm surge waters settles while water is standing and filters into any handy receptacle it can find. A switch box, fuse box, or etc. that has had wet sand in it for several days may need to be replaced. At the very least, a competent electrician should have inspected it for damage.

In any case of freshwater or back water damage to a home or business, there always is the question of whether or not the electrical system has been compromised. Water and electricity are a dangerous, potentially lethal combination, and a compromised system can, as noted, not make itself known for a good while after the flood waters have receded. This could be a very nasty surprise for a real estate licensee showing a property who flips a switch and gets more energy than bargained for.

Cables should also have been inspected. Any and all wiring or cable products that have been exposed to or submerged in contaminated floodwater should be examined by a qualified electrical contractor in order to determine if the cable is safe for continued use.

Not all cables will fail immediately when energized; in some cases it may take months for the cable assembly to fail. In other cases when the municipal workers turn on electricity after making repairs there can be electrical surges that cause damage to buildings that have already been repaired and inspected.
In any case, the report of electrical contractors are the best source for making the proper determination on what may and may not have been done. If there is no report, a job bid or itemized statement presented to the owner by the electricians might tell the story.

Natural gas lines must come to the surface of a property at the meters and point of entry into the building. If a house has a history of flooding and has gas heating or any other gas service, licensees should specifically ask owners for a report on any disruption of gas service during and after a hurricane. If a large tree (or trees) were brought down during a storm it is possible for a branch to pierce the water-softened soil; it can also pierce, split or crush a gas line buried beneath the soft soil. Splitting or crushing of gas and water lines can occur from the force of a weighty item such as a tree landing on the soft ground. The housing around buried cables, or the cables themselves can similarly be harmed.

“Wet” hurricanes are the worst culprits for general water intrusion into buildings. Even though the rainwater is relatively clean, there is so much of it that there is no way to drain it. It simply stands over the whole storm area, filling drain boxes and all available low areas. Then it fills the not so low areas. By the time all low areas are filled, the formerly clean rain water has become contaminated by raw sewage, among other things.

The owner of a camp on a popular lake wants to sell. His property has a history of flooding, but so do most other waterfront properties in Louisiana, so flooding should not affect the value. He is very proud to have made all his own repairs, and even more proud that his camp is one of the few located close enough to town to have gas heat. When asked by a potential listing agent to describe any repairs he or the municipality may have made to the gas line after past floods, he shows how he rigged the gas line with a length of garden hose until the municipality got out as far as his property with more permanent repairs. The listing information on this camp should include a warning against:

a. Smoking on the property
b. Attempting to use any gas services
c. Attempting to use electrical devices whatsoever
d. All of the above
The correct answer is e. Using a rubber hose to conduct natural gas is not recommended, and, since the hose was probably joined to the municipality’s lines using duct tape, the likelihood of leaks is very high. Any open flames or sparks from electrical gadgets or lines can cause an explosion that will scare off the fish for miles around.

**Roofs, Ceilings and Interiors**

There is also the damage to roofs and ceilings that can be caused by wind, wind-driven rain, and the collision of airborne objects when a roof is hit. There is usually no way (nor any sensible reason) to repair roof damage until a storm is over. In the case of hurricanes, it is sometimes possible to make makeshift repairs while the eye is passing over a building, but this can be very dangerous and is not recommended. By the time the storm is completely passes, there can be significant damage to the interior of a property, which will be quickly followed by mold growth until all the wet items are removed, the roof repaired and all wet areas thoroughly dried.

When listing or showing properties with a flood history, it is a very good idea to inspect attics first. Buyers should be advised that they or an inspector of their choice can make a cursory inspection of attics and other suspect areas (lower portions of walls, wooden subfloors, etc.) before they make an offer. If they choose to ignore this advice, ask them to do so in writing.

Disclosure is the key to listing and selling properties with a flood history. Disclosure should be made of the property’s past flood history, and all possible details should be included in the disclosure. This is primarily for the protection of both buyer and seller, but it is also for the protection of all real estate licensees involved in the transaction.

Property inspectors should also be informed of the type, duration and remediation efforts of any formerly flooded property so they will be on the lookout for specific problems. Being a new licensee is no excuse for not providing adequate disclosures. If new licensees expect to be paid at the same rate as experienced licensees they should provide as close to the same level of service as is expected from the old timers.

Newly licensed individuals should be prepared with a list of questions to ask about properties with a flood history; they should also have done enough research to understand the implications behind the answers the sellers give them.
INTRODUCTION

Real estate professionals can rest easy knowing that their industry satisfies a primary need; in essence people must have a place to live and in most cases a place to conduct business. There are many jobs and in some cases entire industries that cannot state that fact because of factors such as outsourcing, offshoring, or structural unemployment. Outsourcing of course is when a product or service is eliminated within an organization and the product or service is procured using an external organization, such as eliminating a marketing division of the organization and hiring an outside marketing or advertising agency. Offshoring is when the product or service is taken to another country, but even with the concern that these concepts cause, the most disturbing is structural unemployment. Structural unemployment is when a person’s job is lost because the job doesn’t exist anymore. I can only imagine the thoughts that went through the heads of stage coach companies when Carl Benz invented the modern automobile and then Henry Ford figured out how to mass produce them, until that point besides the use of trains, it was horses or stage coaches, but as transportation evolved, the needs for those forms of transportation became antiquated. That is what structural unemployment is, it’s when your job or profession doesn’t exist anymore because of a better solution or some cases, minimal or no demand.

As a licensed real estate professional, there could be instances when you lose your job, but the need for real estate professionals is ever present and growing. You don’t have to worry about the real estate industry becoming extinct but as a real estate professional, if you are not proficient with technology, then you may become extinct. You are living in a digital age in which the use of email, mobile applications (apps), digital agreements/contracts/disclosures, digital signatures, and internet based marketing are necessities. If you enter the real estate industry and are not technology proficient, then you will become structurally unemployed. Employers will not want to hire you if you are not familiar with everyday technologies. In essence, don’t apply if you can’t use technology.

For the most part this will be a non-issue for Generation Y and beyond, especially those born in the later years of this generation, they haven’t lived without technology, but for earlier generations including Generation X, technology or the use thereof can be a troublesome issue. With the advent of the Internet, society started sharing information in ways that never occurred before, and now that the technology infrastructure has caught up with information
sharing ingenuity, the way you do things both personally and professionally has now been changed forever.

Even though it seems you cannot remember a time when the Internet was not present, it wasn’t that long ago. The World Wide Web was created between 1989 & 1990 and estimates state that by 1993 there were just over 100 websites on the Internet. Popular search engines like Yahoo were founded in 1995 and Google in 1998. It’s amazing how in that short time, technology has changed and the Internet has grown. According to most sources there are well over 600 million active websites on the Internet and the use of technology has infiltrated every aspect of daily life. From personal email to shopping, and everywhere in between, technology is present. As a real estate professional, you will see it doesn’t stop with shopping for real estate. According to realtor.com, 90% of homebuyers use the Internet during the buying process. With that said, the writing on the wall should be very clear. As a real estate professional, you MUST not only be familiar with technology, but you MUST be proficient with technology in order to succeed. If you think you are going to start a career in real estate and are not functionally competent with technology and have no desire to work on proficiency, then simply put, you will not make it. I know that sounds harsh, but it is reality.

In the next few sections, you will focus on gaining an understanding of technology in the real estate industry. You will review industry regulations as they relate to technology, social media, technological resources, technological tools, and how business is being created and conducted through technology.

**INDUSTRY REGULATIONS**

It is important to be aware of industry regulations that impact licensees; in this section a cursory review will be made of regulations associated with the use of technology in the real estate industry. There are many other regulations, but these regulations are ones that every licensee should be aware of and have a general understanding.

**ESIGN Act**

The Electronic Signatures in Global and National Commerce Act or the ESIGN Act as it is known, is a federal law enacted into law in 2000 that legalized the use of electronic signatures and records. Individual states have laws pertaining to digital or electronic signatures, but this federal law effectively legalized the usage of electronic signatures and records on an interstate basis. There are also parameters of this law that deal with foreign commerce as it relates to
these topical areas. After the passage of this law, parties to a contract may elect to digitally sign a document and that electronic signature carries the same weight as a signature executed with pen and paper. An electronic signature may be as simple as a party to the contract typing their initials and name using a keyboard. Today there are a variety of companies that provide esignature services which allow users to sign documents online without having to print, sign, scan, and email the document. This saves time and money when executing agreements. I will discuss these types of services in the **Web Tools** section of the course.

**Louisiana Real Estate Commission Rules and Regulations**

The Louisiana Real Estate Rules and Regulations expressly states the rules as it relates to the usage of electronic communication and Internet advertising. As a licensee, it is imperative that you be knowledgeable of these rules and regulations in order to maintain compliance as you use technology.

Chapter 2515 of the Louisiana Real Estate Commission’s Rules and Regulations states the following:

A. A real estate broker advertising or marketing on a site on the Internet must include the following data on each page of the site on which the advertisement appears:
   1. the broker's name or trade name as registered with the commission;
   2. the city and state in which the broker's main office or branch office is located.
   3. the regulatory jurisdiction(s) in which the broker holds a real estate brokerage license.

B. A real estate broker using any Internet electronic communication for advertising or marketing, including but not limited to, e-mail, email discussion groups, and bulletin boards, must include the following data on the first or last page of all communications:
   1. the broker's name or trade name as registered with the commission;
   2. the city and state in which the broker's main office or branch office is located.
   3. the regulatory jurisdiction(s) in which the broker holds a real estate brokerage license.

C. An associate broker or salesperson advertising or marketing on a site on the Internet must include the following data on each page of the site on which the licensee's advertisement or information appears:
   1. the associate broker's or salesperson's name;
2. the name or trade name of the licensed broker or agency listed on the license of the salesperson or associate broker;

3. the city and state in which the broker's main office or branch office is located.

4. the regulatory jurisdiction(s) in which the broker holds a real estate brokerage license.

D. An associate broker or salesperson using any Internet electronic communication for advertising or marketing, included but not limited to, e-mail, email discussion groups, and bulletin boards, must include the following data on the first or last page of all communications:

1. the associate broker's or salesperson's name;

2. the name or trade name of the licensed broker or agency listed on the license of the salesperson or associate broker;

3. the city and state in which the broker's main office or branch office is located.

4. the regulatory jurisdiction(s) in which the broker holds a real estate brokerage license.

If a licensee, using Internet advertising and/or electronic communication as stated in Chapter 2515 and does not adhere to the requirements set forth in the rules and regulations, then the licensee will be subject to disciplinary action by the Louisiana Real Estate Commission.

Furthermore, the Louisiana Real Estate License Law states that licensed brokers must maintain records for a period of 5 years, and with the Louisiana Real Estate Commission’s approval those records may be kept in a digital format thus eliminating the need for paper records.

**SOCIAL MEDIA**

Social media is a means whereby people interact through the Internet in which they create and share data with each other; effectively, forming web based communities that allow people to stay connected with each other. Web sites such as Facebook®, Linkedin®, and Twitter® are all forms of social media that are available to users; although, there are many more, these are the most popular social media sites. Social media plays a pivotal role in both personal and business relationships and networks. In fact, Social Media allows a person to incorporate their personal contacts into their business network and the forum that social media displays are unprecedented in terms of reach and availability to potential clients.
As a real estate professional, the use of social media can be vital to your career. At no other time in history have we had the capacity with the click of a mouse to market to hundreds and even thousands of potential clients. By informing your personal network of your profession, you have now directly marketed to your personal network in the most time and cost efficient means available in the market. Using Facebook® as an example, your friend Joe whom you have not seen in person since high school now becomes a potential client with a simple post. One of the most frustrating situations for real estate professionals is when you find out that a friend or family member (a member of your personal network) was a party to a real estate transaction and you were not involved; with the use of social media, these type situations can be minimized or even eliminated because you now have access to your personal network on a 24/7 basis. In this section, we are going to define and explore opportunities with the use of Facebook®, Linkedin®, and Twitter®.

Facebook®

Facebook® is the most recognizable brand of social media, with current estimates of over one billion users, it is also the largest. To put that in perspective, one in seven people on the planet have a Facebook® account. Although, most people are very familiar with Facebook®, it is effectively a web based community in which users can network with one another. Facebook® users can “friend request” other users to add to their network, and after the other user accepts the “friend request”, they will be added to your network. As a user makes a post, it will appear on the home page of each user in your network. There are also other tools such as private messaging and chat that allows users to interact. With the number of users, and the capacity to access everyone in your network with a single post, Facebook® has become one of the most powerful tools available for networking, and it is a free service. As you build your Facebook® network, it is important to stay active with new posts in order for users in your network to feel connected to you.

Because of the nature of the real estate industry, Facebook® is extremely effective in terms of networking and marketing. The introduction of the Social Media section makes the case for networking; as you build your network, you can make real estate and professional posts in order to make certain that your network identifies you as a real estate professional because as stated in the introduction to this section there is nothing worse than to lose a sale that you should have procured because a friend, family member, or acquaintance does not identify you as a real estate professional when needing real estate services. Part of the identification process is also marketing. As a real estate professional make posts including information about your listings, because this allows you to reach a segment of the market with property information and it continues to reiterate the identification process of you as a licensed real
estate professional. This isn’t solely for new licensees, licensed real estate professionals who have been in the industry for many years can also benefit from social media networking because new relationships are constantly being forged and you are also in social settings in which other people may know you through charitable organization, religious affiliations, children’s activities, etc., and never know your profession. Facebook allows you to identify yourself in a professional capacity.

Another benefit to marketing on Facebook® is that it is free, just like with joining the service. When I say free, I am speaking with regard to making posts or a professional page separate from your individual page, if you choose to do so. Facebook® does offer paid advertisements in which you can pay to market yourself to a very direct market; for example, a certain town or parish. On the side of a user’s page are advertising spots, and you could pay to purchase one of them. As print media costs continue to rise and become less effective, Facebook® offers either an alternative or a complementary tool in your marketing portfolio that you may offer to clients. Furthermore, in the digital age in which we work and live, you must have a digital marketing portfolio or you will lose listings and other business. The negative of Facebook® is that you are limited to marketing to your network unless you pay to advertise. So, although effective for both networking and marketing, because of the nature of this social media site, it is definitely more effective for networking than marketing, but do not underestimate the site’s marketing worth even with just maintaining a free marketing strategy.

Linkedin®

Linkedin® is a social networking web site for professionals; unlike the broad Facebook membership, Linkedin® is designed for professional networking and whereas Facebook® refers to other users in your network as friends, Linkedin uses the name “contacts”. Linkedin® allows users to develop a profile based on professional experience and then allow contacts in your network to endorse your skillset. Also in similar fashion to Facebook, Linkedin® users can make post to their page. Linkedin® allows its users to search for available jobs within their network and it allows users to procure endorsements from other contacts in their network. Linkedin® also has an interests tab that allows users to stay informed regarding certain companies, join and interact with specific groups, and through what it refers to as “influencers” allows users to stay informed about areas of interests.

As a real estate professional, Linkedin® can be very important because it allows new and experienced licensees to form and build relationships with other licensees, lending professionals, title professionals, insurance professionals, legal professionals, potential clients, and other contacts important to the practice of real estate.
Twitter®

Twitter® is a social networking service that allows its users to send text messages that consists of no more than 140 characters. These text messages or mini blogs if you will are referred to as tweets. As of 2012, Twitter® states that it has over 500 million registered users that generate over 340 million daily tweets. When a user tweets a message, his or her followers will see the post and if so desired tweet back. Twitter® is different from Facebook® and Linkedin® in that its focused interaction between its users is very specific by posting tweets and not broad based in its approach to facilitate social interaction.

As a real estate professional, you should build your professional network with colleagues, service providers (lenders, title companies, etc.), friends, acquaintances, and potential clients (which could include friends and acquaintances). Twitter® can be helpful to real estate professionals by posting mini blogs regarding industry news, opinions, events (such as open houses), or current events as well as new listings and property updates. By posting a tweet, you can provide valuable information to your followers without tying up a tremendous amount of your time.

TECHNOLOGICAL RESOURCES

There are many web sites on the Internet that can assist licensees with the daily practice of real estate. Some of these sites are equally as useful to consumers who are entering the market place as buyers and sellers. As I stated earlier, according to realtor.com, 90% of buyers use the Internet when purchasing a home. That is an incredible statistic and because of that demand in the marketplace, there are many real estate web sites that can be used as a resource for licensees and consumers alike. In this section, I will discuss Trulia®, Zillow®, and realtor.com, which are a few of the more popular real estate web sites on the Internet.

Trulia®

Trulia® is a public traded company that through their web site and mobile application allows users to perform property searches and procure additional data; it states that it currently has over 31 million visitors per month and according to the web site many of its visitors have not enlisted the assistance of a real estate professional. Trulia® provides data for both real estate sale and rental markets. Consumers can search available listings and in addition to search results, consumers can view data regarding schools with ratings, crime reports, and sales data. Real estate professionals can enter their listings for free, but Trulia also offers packages that real estate professionals can purchase which provide additional services such as ad free “featured listings” and sales lead information. Real estate professionals can also place local
advertisements which can be viewed within specific geographic searches and mobile
advertisements are also available. Currently, all properties available on Trulia® only come from
real estate professionals and/or professional organizations (MLS); individual homeowners
(FSBO’s) cannot post properties on the web site. Trulia® draws its property information from a
variety of different sources, such as salespersons, brokers, and MLS services; and other services
such as mapping from Google, crime statistics from partnering web sites including
crimereports.com and everyblock.com, and sales information from a variety of sources
including public data. It is important to state that web sites such as Trulia® are a good resource
but as a real estate professional, always double check information before relying on it. Because
of the way that search data is generated, for example using zip codes, information such as
property values can be inconsistent and inaccurate.

Zillow®

Zillow® is another web site with accompanying mobile application that is geared toward the
real estate industry in which users can search for available properties (both on a “for sale” and
“rental” basis), research property values referred to as Zestimates®, procure local information,
ask real estate advice, and research competing mortgage companies. Currently, Zillow® states
that it has data on over 100 million properties throughout the United States. Like Trulia®,
Zillow® offers real estate professionals’ fee based packages to spotlight them and to provide
access to additional services. Unlike Trulia®, Zillow® allows individual homeowners (FSBO’s) to
upload properties to the site. Zillow® also allows users to research property value trends for a
specific property across an incremental period of time. As with Trulia® or any other web site
that provides valuation services, be cautious, because there can be flaws in the formula.
Zillow® like other competing sites is quick to point out, that their valuation services are not
appraisals and should not be viewed as such, but rather as a tool to assist real estate
professionals and homeowners with information for a specific property or area. Typically, the
valuation formulas used by these web sites includes tax information from public records, sales
information, and even input from users; with that said, users can enter inaccurate information
and property tax assessment data can be a serviceable source but can still be flawed with
regard to wrong or outdated assessments. Overall, real estate professionals should view sites
such as Zillow® and Trulia® as a tremendous source of information and potentially as a tool in
their marketing plan, just remember they have limitations.

Realtor.com

Realtor.com is a web site with accompanying mobile application that is owned and operated by
the National Association of Realtors (NAR). It is the most complete collection of available
properties on the Internet because the web site procures listings from all partner multiple
listing services (MLS) nationwide. As realtors enter new listings (for sale or rentals) into their local multiple listing services, they are automatically uploaded to realtor.com. According to realtor.com, it is the most visited real estate web site on the Internet. Because it is owned by the National Association of Realtors, only member real estate professionals can have listings available on realtor.com, not for sale by owners (FSBO’s) nor non-member real estate professionals can market through this site and because of its design for adding new listings through local multiple listing services, realtor.com’s data is very accurate. Like other real estate web sites, realtor.com offers information on a variety of real estate topics including but not limited to housing data (sold information, foreclosures, etc..), advice (such as pointers on moving), market data (average sales prices in a specific area, number of houses available for sale, etc..) and mortgage information. Realtor.com also offers fee based packages for realtors®, which provide additional services and data.

WEB BASED BUSINESS OPPORTUNITIES

As a real estate professional, you must look for opportunities to procure and grow your business as well as embrace and utilize the methods for conducting business. As I stated in the introduction, if you do not accept technology and utilize it, then you will not be successful in today’s real estate marketplace. This section will focus on these points, how can you grow your business using the Internet and what web based practices must you understand to conduct business as a real estate professional using the Internet.

How Can I Grow My Business Using The Internet?

In discussing growing your business using the Internet, your focus should be to evaluate business that can actually be procured using the Internet. I have already discussed marketing yourself on your own website as well as through other sites like Trulia® or Facebook®; it’s great to make yourself available to the public or through your website, and it should definitely be part of your marketing strategy, but how can you proactively procure business using the Internet? I will discuss three ways to procure business via the Internet. I will discuss social networking, corporate needs, and foreclosures. There are many other ways to proactively engage in practicing real estate through Internet leads, but hopefully these three areas will get you to start thinking in creative ways to procure business and develop a niche in the digital marketplace.

I discussed an entire section on social media in terms of describing and understanding it; however, with regard to procuring business, it can be a gold mine, especially with Facebook®. With the number of social media users being so high and the expansive nature of the posts that take place, daily monitoring of your network can yield business. Social media users openly
discuss many personal decisions including moving or even the thought that moving or relocating may be on their horizon. First, make sure your network is aware that you are a licensed real estate professional, and second be proactive in reaching out to posts that suggest a move, and ask for their business. It is unfortunate, but statistics show that most sales professionals rarely directly ask for a potential clients business. If someone in your network is purchasing or leasing real estate, chances are they will be using a real estate professional, so why not you? Do not be shy or reactive; be proactive in asking for their business.

Many corporate property needs are openly displayed on their web sites in terms of specific geographic areas that they are actively engaged in procuring land and/or real estate space (either in terms of leases or purchases). You can monitor these websites to see if your market area is on a specific company’s target. By knowing a ready, willing, and able buyer is present, you can search for an available property (or even property that may not be actively marketed through a brokerage agreement) and broker the transaction.

Foreclosures in the market place have turned digital. Most REO (real estate owned) property owners are using the Internet to market available properties. Many banks as well as government entities post property that it owns on the Internet. Many of these sites will allow you to sign up with them if you desire to list their properties and this is a viable business opportunity; however, there are also other opportunities. As you develop your network, you will develop relationships in your network that include investors whom desire to purchase property in order for rental income or to flip and procure a short term income. By monitoring sites such as local and national banks, homepath.com, the HUD Home Store, and other such sites, you will have your pulse on the foreclosure market and this will allow you to procure business.

WEB BASED PRACTICES OF REAL ESTATE

Home Path®

As the real estate industry continues to journey deeper into the use of technology, many organizations are requiring the use of technology to conduct basic real estate activities. For example, some organizations that own real estate require that offers be submitted using the Internet and that all communication be in digital form (email, etc.). For example, I mentioned homepath.com in the previous paragraph. Home Path® is Fannie Mae’s web site and in order to submit an offer on one of its properties, a real estate professional must submit the offer digitally through the web site. The properties on Home Path® are foreclosures and they are listed with local real estate brokers, but if you have a buyer who wants to make an offer on one
of these properties, then it must be done through the web site. In traditional real estate practice, the selling agent submits the offer through the listing agent, but not on sites like Home Path®, the selling agent submits digitally straight to the seller. Real estate professionals must sign up at homepath.com; once the licensee is signed up, he or she can submit offers and review said offers.

hudhomestore.com

Another such site is the hudhomestore.com. This is the site used by the United States Department of Housing and Urban Development to sell properties that have been foreclosed on through the default of a FHA insured mortgages. These properties are listed through local real estate brokers, but once again as with homepath.com, offers for FHA foreclosures must be submitted through the hudhomestore.com. Real estate professionals with a sales license cannot individually register with this web site, the licensee's broker must first register or sponsored licensees cannot submit offers on behalf of clients. Before registering, a broker must apply for a NAID (Name Address Identifier) Number. It takes approximately two weeks for a broker to procure a NAID Number and once obtained, the broker may use the number to register with HUD. After a broker procures a NAID Number it is valid for a period of one year and the broker must recertify annually to keep the NAID Number active. If your broker is registered, then sales licensees and associate brokers may register; sales licensees and associate brokers will use the same NAID Number as their sponsoring broker. Please be cognizant of your broker’s registration status, because if you have a client who wants to submit an offer on a property and your broker is not registered then you may lose out on the sale. Remember, registration takes a couple of weeks, and that period of time may prevent you from submitting an offer on a client’s behalf if your broker is not already registered.

WEB TOOLS

There are many technological tools that can assist real estate professionals in the practice of real estate. All real estate professionals should be aware of these tools that are at their disposal which can assist in making the practice of real estate easier, more efficient, and ultimately more profitable. Because of the nature of the real estate industry, which is that of a primary need (especially in the residential market – people must have a place to live), the real estate industry has always been onerous with regard to documentation. However, with the progression of web based technology, digital tools are numerous, easy to use, and for the most part cost effective. In this section, I will discuss a few of these tools, please understand this is not an endorsement of these specific companies or products, but it is meant to be expressed as examples of products available in the industry to assist real estate professionals in the practice of real estate.
Web Sites

By now, everyone is familiar with web sites. A web site is a series of individual pages linked together using a domain name and stored on a web server. The web site or site can be used for many uses from advertising or supply information to providing intricate searches or databases inquiries, and in many cases the site can perform multiple functions. Web sites have become very affordable and easy to manage; there are many services that provide web site templates as well as develop packages, and with tools like Word Press, which is a free and open source content management system tool, a user can choose a template and develop their own site. Even if you aren’t developing your own site, chances are the person or organization you are using for development purposes will probably use a tool such as Word Press.

Web sites are a necessity for all real estate professionals because outside of yourself, it is literally the number one advertisement for you as a real estate professional. The information on a web site will typically include information about you, your listings as well as other properties (local MLS listings can be linked through a real estate professional’s web site to allow potential clients to view local listings from one source), community information, market data, and other extraneous information. For years, real estate professionals had to use expensive forms of marketing like print advertising to provide information about listings as well as to develop an individual brand in the marketplace, but with the use of tools like web sites, real estate professionals can now transmit endless amounts of information and data for a small fee. This is not meant to say that print advertising should not be used, it very well may be a form of marketing that you choose to use, but rather than paying for a larger expensive print advertisement or being limited to the amount of information that you can display, a web site is not limited. In fact, real estate professionals who utilize print advertisement as part of their marketing mix also include their web address in the print advertisement as a means to redirect the potential client to their web site. At that point, the real estate professional goes from limited information because of space limitations to unlimited information. Your web site should be the center of your marketing campaign, whether you are passing out a business card, promotional writing pen, or in the aforementioned print advertising example, your web site address should be publicized everywhere.

One of the most important things to remember regarding your web site is that it is an extension of you. If your web site is not aesthetically appealing, if the content is bad, if you have misspellings, or any such problems, then it may hurt your business. How can a client entrust you in assisting him/her with making the largest financial decision of their life, when your professional image is suspect. Please be cognizant of all aspects of your web site because you
want it to be an asset and not a liability. Also, remember the Louisiana Real Estate Commission’s Rules and Regulations have a specific set of guidelines that must be followed when advertising on the Internet.

**Digital Agreement Services**

Formulator® is a web based program that allows real estate professionals to write digital real estate agreements and it has an extensive library of real estate agreements that are specific to Louisiana. Real estate professionals can fill in the blanks to whatever agreements they need, save the documents online under their account and email them to their client in PDF format. This eliminates the need to hand write agreements, then fax or scan and then email them. The cost of Formulator® is very affordable, as of the writing of this course; the annual subscription fee is approximately $100 per year. The company that creates Formulator® also has offline solutions and other products including DocuSign® integration. It is also important to state that although programs such as Formulator® are great tools for real estate professionals, the use of these programs cannot be misconstrued to be a substitute for the records retention requirements as set forth in the Louisiana Real Estate License Law. There are also other organizations that offer digital agreement services and some brokerage companies have proprietary digital agreement services

**Digital Signature Services**

DocuSign® is a service that allows its users to utilize an esignature when signing documents. An esignature is when a party to an agreement signs a digital signature. The use of an esignature is as binding as a written signature. DocuSign® allows real estate professionals to upload documents for signing and the parties to the agreement can simply type their initials and/or name on the document. This service can be utilized on many mobile devices including but not limited to phones, tablet computers, personal computers, etc. and the service is very secure, which also makes it very appealing. Once the document(s) is signed, then it can be transmitted through electronic communication. The use of services such a DocuSign® allows the documentation process to remain in the digital realm without printing, signing, scanning, or faxing, which once again maximizes efficiency and productivity, thus increasing productivity. Like Formulator®, a real estate professional can purchase an annual subscription to DocuSign® and as of the writing of this course, the annual fee for this service starts at approximately $180. Once again, there are other esignature services available in the marketplace, research them all in order to choose the one that best fits your individual needs.
HYBRID SERVICES

Offer Xchange®

Another interesting tool available in the marketplace is Offer Xchange®. Offer Xchange® combines digital agreements and digital signatures into one service. This service provides the agreements, and then the parties to the agreement can securely login and digitally sign the agreement. The service even provides a status update, for example changing the status of the offer to “accepted”. Hybrid Services such as Offer Xchange® or services that can be integrated such as Formulator® and DocuSign® can save time and money for real estate professionals. As of the writing of this course, the fee for this service is $29.95 per month.

MOBILE APPLICATIONS

There are many mobile applications (apps) that can be purchased on a smart phone and used as tools for practicing real estate. This section will discuss a few apps that are used in the real estate industry, but I would encourage real estate professionals to research all real estate related apps because this is not an exhaustive list but rather a means to have real estate professionals think in this direction and utilize apps that can assist in the daily practice of real estate. Also, there are apps that are added almost daily and new to the market; therefore, review the below available apps and think about how these and other apps can assist real estate professionals with their work.

JotNotPro®

JotNotPro® is a mobile phone application that can be used to scan documents. The goal is to keep documents in digital format but for the occasion that you have a hard copy and need to email or fax a document to someone, JotNotPro® is a simple and cost effective solution for on the go scanning. Once the app is purchased, the user can scan one or more pages and electronically communicate the document in PDF format. The document will also be saved in the app program. Hence, a real estate professional can have a hard copy of any agreement, have a client sign it, and then take a picture of the document through the app, process it, and then email or fax it to the client and/or cooperating real estate professional on the spot. The quality is serviceable and at the time of the writing of this course, the app is a one-time $1.99 fee. As with the other tools in this section, there are competing brands and the real estate professionals should research them to find the best fit.
Mortgage Calculators

There are a variety of mortgage calculator applications that are available for a low cost and even some that are free. In the far majority of transactions in which the real estate professional is representing a buyer, the buyer will ask the amount of a monthly payment, and because mortgage loans are amortized, a program will be needed to calculate the payment. By using a mortgage calculator app, the real estate professional can very quickly answer this and other mortgage related questions.

CoreLogic Fusion

If a real estate professional is a member of their location multiple listing service, then the real estate professional can download this app and have mobile access to the MLS. Many licensees use I-Phone’s and I-Pad’s, which are Apple products and will not support the platform that local multiple listing services are built on, but with this app, real estate professionals can login and search the MLS with these products. By doing this, real estate professionals will have real time MLS searches and not lose precious time and valuable transactions by having to return to an Internet hot spot for searches. As of the writing of this course, this app is free, but the licensee must be a member of their local MLS to login to the system.

Google Maps

Google Maps can perform multiple actions that can assist with the day to day functions of real estate professionals. This app can provide voice guided navigation for directions to properties as well as visual views for around the properties. A client may ask what is beyond a wooded area behind a specific property; with Google Maps a real estate professional can answer that question. Google Maps also allows the user to save searches for future usage, and as of the writing of this course this app is free.

Trulia®, Zillow® and Realtor.com

I previously discussed Trulia®, Zillow®, and the realtor.com® web sites. These web sites have their own apps that can be downloaded to a mobile device. Real estate professionals and consumers alike can use the functionality of these web sites in an app format to assist with property searches, valuations, and other tools available with these sites. As of the time of the writing of this course, these apps are free.
CONCLUSION

The real estate industry is completely immersed in technology. There isn’t a single facet of the industry that isn’t excluded from technology, from marketing to property searches to market research to agreements, every aspect of the industry is technology based. Technology is no longer a luxury but now a necessity. If a person decides to enter the real estate industry as a licensed real estate professional and is not technology proficient or is not willing to become technology proficient, then the message is simple, chose a different profession because it is not feasible to practice real estate without using technology. Many real estate professionals are very familiar with the concepts, tools, and resources discussed herein, but I would encourage you to learn more because technology is progressing and changing at a rapid rate. As a real estate professional embrace the change, stay ahead of the curve, and never stop learning, this along with your hard work will be pivotal in your success as a licensed real estate professional.
Introduction

Across the nation, the number of buyers who pay cash for real estate averages between five and ten percent annually. To real estate licensees this means that ninety to ninety five percent of the buyers they will come into contact with will rely on some type of financing in order to be able to purchase. It is not unusual for a licensee to retire from a long and profitable career in real estate sales and not once meet a buyer who is able to purchase without financing some portion of the sale price.

Although there are some exceptions, the majority of real estate purchases are made using mortgage loans where the property is pledged to secure the loan.

No matter how much of a “people person” a licensee may be, no matter how good his or her contacts are within the community, unless financing is successful there will be no closings of transactions. Without closings, licensees do not get paid.

It is therefore of greatest importance that all licensees have some understanding of the mortgage loan process. The very first thing new licensees need to understand perfectly is that they are not usually mortgage loan originators or processors. Those are the folks who undertake the exacting, detail rich, jobs of ensuring that all the documentation required by the lender will be gathered into the precise form required by the lender.

Most licensees do not have these skills and have no wish to acquire them. Fortunately, in depth understanding of exact procedures of loan processing is not necessary to be able to have a successful real estate sales career. What is necessary is an excellent understanding of how the overall process moves from application to approval and the role of the licensee in getting there.

Each licensee should have a basic knowledge of the way the qualifying and approval processes work for several good reasons:

- Licensees should be sure that consumers are actual buyers and not just lookers who waste licensees’ time and stress sellers
- Showing property that consumers can actually buy saves time and disappointment all around
• Buyers will be better served by licensees who are familiar with the full variety of mortgage loans available
• Not all lenders are equal; if a lender is attempting through malice or incompetence to defraud a consumer the licensee should recognize the attempt

Therefore, the lessons any licensee should learn about financing are:

1. Licensees should have general competence in real estate finance, and,
2. They should use this knowledge to oversee the process, not attempt to perform it.

As we work our way through this module many licensees will be tempted to think it’s a waste of time for them to bend their brains around information that loan originators and processors already possess.

Those licensees would do well to remember the recent mortgage lending scandals where unsuspecting consumers were coerced into accepting mortgage loans they could never realistically hope to pay back. Only real estate licensees who were inexcusably ignorant of unethical lending practices or themselves willing to fleece consumers would have allowed consumers to enter into predatory loans.

After witnessing the suffering brought on by these unethical lenders, the current group of newcomers to the profession must try do better than some who went before you. Because of the widespread coverage of unethical lending practices and the resulting real estate market meltdown, it is no longer possible to use ignorance as a defense. The only other path available to licensees is to learn about real estate financing.

**Prequalifying questions**

Prequalifying questions are those lawful questions licensees ask so that they will not be forced to show every single property available in the market area until, by trial and error, one is eventually found that the buyer wants and can afford.

A very important, but nonfinancial, question should also be asked right up front; consumers should be asked to identify the geographic areas in which they would prefer to live. This simple question prevents licensees from deciding for the consumers where they will live (a clear violation of the fair housing laws).

There is another very important question that should be asked of any potential buyer (or seller) that is not a financial prequalifying question but could also impact your ability to earn a commission. That question is: “Are you working with another agent?”
If the answer is negative, you should still pay attention to the level of familiarity the consumer has with properties currently on the market or recently put under contract. A potential buyer who knows, for example, that a property has unacceptable interior colors or a really tiny master bedroom closet did not learn these facts from media advertising. Knowledge of specific information on properties may be a clue that these folks have been looking with another licensee. When and for how long they have done so is critical information to have.

The questioning period begins right after hello. Prequalifying question #1 is so basic that sometimes we forget to ask it:

**Prequalifying Question 1: Are you employed, or are you paying cash?**

If they’re not working, and they aren’t paying cash, they’re probably wasting everyone’s time. Anticipated insurance settlements and inheritances are not actual cash until they are received and there is usually a long time period between anticipation and reception. Sellers are usually not willing to roll the dice in favor of mama passing away shortly, and smart licensees shouldn’t either.

There are a couple of good reasons for unemployment. Having just completing education or military service and considering multiple employment offers are the best reasons for not being employed. In both cases employment is imminent, and it can be assumed that when multiple employment offers are being considered one of the factors will be comparative income.

In those rare instances where a buyer states he is paying cash, he should be informed by the licensee that he will be expected to verify the amount and location of his cash when he makes an offer.

**Prequalifying Question 2: Are you interested in buying or renting?**

It is very disheartening to have spent days or weeks showing properties for sale to learn the consumer really wants (or needs) to be looking at rentals. It’s almost as disheartening to learn up front that the consumer will look at both sale and rental properties before making a decision, but at least the licensee knows how much time it is reasonable to devote to a consumer who has problems making decisions. Note: buyers who are capable of making decisions are the best kind.

In addition to helping with time management, knowing a consumer is interested in rentals either instead of or in addition to sale properties provides clues to what the next prequalifying questions should be.
Prequalifying Question 3: Have you met with a mortgage company to learn how much you can afford to buy?

If you are dealing with a first-time buyer it is very important to distinguish between the friendly folks at their bank branch and a real loan originator. No offense to the good folks who work at the branch bank, but the difference between them and a loan originator is very much like the difference between a general practitioner and a cardiac surgeon when cardiac bypasses are needed. They’re nice and they know something about mortgages, but they don’t have the specialized knowledge a loan originator has.

Sometimes the branch bankers don’t realize they don’t have this specialized knowledge, and neither do most first time home buyers. Many first time buyers believe there will be some financial advantage to getting their mortgage from the bank where their checking and savings accounts are placed. They are almost always very, very wrong.

If prospective buyers say they have “talked to” a lender, it is the job of the real estate licensee to explain that nothing is accomplished until a formal application has been made and all required fees have been paid.

If prospective buyers say they have not talked to a lender but have consulted an Internet prequalifying web site, they must be told that nothing is accomplished until a formal application has been made and all required fees have been paid, all with the lender who is actually going to give them financing.

In fact, no matter what their status with a lender, nothing is accomplished until a formal application has been made and all required fees have been paid.

The only way they will know how much they can afford to buy is to make a formal mortgage application with a real loan originator. If they say they have done so, that triggers the next question:

Prequalifying Question 4: Do you have your loan approval letter from the lender with you?

One purpose of this form is to break down how much mortgage buyers can afford. Another is to determine the type of loan that is most appropriate for buyer’s financial status. Equally important, this document bridges any possible gap between the fantasy of what the buyers want and the reality of what they can afford.

Always remember to check for the borrower’s and loan originator’s signature on this document. If it is not signed, the lender is not responsible for its content. The borrower’s signature indicates that the information in the document has been explained and understood.
When possible, it is good practice to have buyers prequalified before they are shown any property. This practice ensures that consumers are actual buyers before licensees’ and sellers’ time is wasted. It also prevents buyers from viewing properties that are more costly than they can qualify to purchase.

The time for prequalifying questions is over at this point. If there is no loan approval letter the ideal next step is a formal loan preapproval appointment with a lender.

If you choose to show properties without having the buyers preapproved for a mortgage loan, keep in mind that you are rolling dice on whether you will have a closed transaction even after investing a lot of time and money in the buyer.

If you are the designated listing agent of a seller who presents an offer that is conditioned on the offeror being able to find financing, make very sure the seller understands that you and he are both rolling dice on a possible closing.

**Prequalified and Preapproval Letters**

There is an enormous difference between a buyer who is prequalified and a buyer who is preapproved. Real estate licensees may prequalify consumers; unless they are also mortgage lenders they have neither the expertise nor the authority to preapprove a borrower.

The **prequalified** buyer has visited with a loan originator and answered questions regarding his financial and economic status. No credit report has been secured, nor has employment or savings been verified. The lender is saying, in effect, if this potential borrower has told the truth, he probably is eligible for a mortgage loan from some lender.

The **preapproved** buyer has a letter stating that the lender has verified all information that needs to be verified and will make a mortgage loan to the borrower. The letter will then list the conditions under which the loan will be made: date of preapproval, maximum mortgage amount, interest rate maximum, maximum loan term, no change in employment or other economic status, no change in marital status (if applicants are a married couple qualifying on both incomes or joint savings or if a single applicant marries), etc.

The preapproval letter can be attached to any offers made by this purchaser. Inclusion of the preapproval letter with offers will usually strengthen offers, as sellers will know the suspense attached to whether or not the offeror will be able to secure financing is removed.

Obviously, preapproval is the best way to go. There are times, however, when preapproval is just not possible. At those times it is imperative to:

1. Get the offeror to a lender as soon as possible,
2. Watch while an application is made, and,
3. Witness the payment of all required application-related fees.

Sometimes it is not possible to witness the loan application. When that is the case, just to be absolutely sure all necessary business has been transacted with the lender, ask for a copy of the Truth-in-Lending form. Check to see that all blanks are filled in and that the loan originator and the borrower have signed the form. School the applicant to provide you with a copy of the approval letter when it arrives.

Confidentiality

Banking regulations forbid lenders from sharing loan information with anyone other than the applicants. “Anyone” includes parents or spouses of applicants and definitely includes real estate licensees.

There are times, however, when it is in the best interest of the borrower and the transaction for real estate licensees to get information on pending loans straight from the lender. In these times, the borrower may submit, in writing, permission for the lender to share information on the loan in process with a specific real estate licensee who is properly identified (name, company name, license number) in the written authorization.

The permission may be broad enough to cover all facets of the loan in process or it may be limited to certain factors. This choice is the option of the borrower. Any information learned as a result of the borrower authorizing the lender to share with you is confidential and may not be shared with anyone other than the borrower(s).

At no time may the lender legally share information on a pending loan with a real estate licensee (who is not the borrower) without written authorization from the applicant.

A prospective buyer requests to be shown residential properties. Which of the following information should you attempt to solicit during the initial conversation?

- a. If the residence should be close to buyer’s work.
- b. If the neighbors should be of a specific race.
- c. If the buyer has been preapproved for a loan.
- d. Both a and c
The correct answer is d; b is a violation of fair housing laws and should not be asked; a opens discussion of buyer’s employment; c opens discussion of how the buyer plans to pay.

**Type of Loan Best Suited to Consumer**

**Introduction**
Mortgage loans for real estate purchase are so universally used and so readily available that most consumers and even most real estate licensees do not realize that less than three generations ago there was no mortgage loan industry. Banks might lend highly esteemed customers money to buy real estate, usually farms or other businesses, and the real estate secured the loan, but this was not the norm. The owner’s equity (or down payment) was typically set by banks at fifty percent.

There was no amortization of the principal. Borrowers paid interest only until the due date of the loan (usually ten years or less from the beginning) and a single payment of the entire amount of the loan was made at the end.

Banks had no mortgage loan departments, nor even mortgage loan originators. If the bank president liked the deal, the loan was made. This system worked because bank presidents of the time were notoriously tight fisted and fiscally conservative. This essentially meant that very few mortgages were granted.

Insurance companies were the first to brave residential and small business real estate loans. Their motives were less than pure. They reasoned that if borrowers failed to pay they could foreclose on the properties and gain large amounts of real estate more cheaply than by making outright purchases. Of course, they soon found lower risk and higher payoff schemes and eased out of the mortgage business.

Savings and Loan Associations were invented in the early 1800s and were specifically intended for the use of their members who deposited funds into savings accounts and, when needed, could borrow from the associations. The 1946 movie, “It’s a Wonderful Life” starring James Stewart as the reluctant president of a building and loan association is an excellent representation of the way the building and loans worked until after the middle of the twentieth century.

By the 1900s savings and loan associations (sometimes chartered as Building and Loan Associations) were leaders in the mortgage lending business. These associations would lend up to eighty percent of the value of a residence.

In the 1930s modern mortgages appeared on the scene when the Federal Housing Authority (FHA) initiated a new type of mortgage specifically for buyers who didn’t have the 20 percent
down payment required by savings and loan associations. They first lowered down payment amounts to ninety percent of value; later the down payment amounts were lowered to ninety-five percent of value and, in time, even lower.

FHA eventually introduced the amortized mortgage, which allowed borrowers to pay a graduated percentage of the principal amount along with installment interest payments.

Observing FHA, banks realized that there was money to be made in lower equity loans and, in the 1950s began offering home loans with ten percent down. In the 1960s they lowered their down payment requirements to five percent of value.

Low borrower equity loans generally mean that there is a greater risk of borrower default. When a borrower defaults on a mortgage loan the bank resumes ownership of the property and can sell it again, but for most banks the risk is too high and the return too low for foreclosures to build their portfolios. Low consumer equity loans must be buffered by some sort of financial device designed to limit risk.

Enter Private Mortgage Insurance, commonly known in the real estate industry as PMI. PMI can be named something else, as FHA Mortgage Protection Insurance illustrates, but if the objective is to protect the lender’s risk position on any part of a mortgage, it is PMI by another name.

Almost always PMI is an insurance policy that, in the event of borrower default on a mortgage, pays the lender the difference between the amount borrowed and eighty percent of the value of the mortgaged property.

This is the reason that PMI is based on the mortgage amount, not on the sale price of a property. It is also the reason why, under certain circumstances, PMI can be removed from a monthly mortgage payment. The circumstances are:

- No language in the mortgage requiring PMI for the life of the loan;
- Evidence that the difference between the unpaid mortgage principal balance and value are twenty percent or less; and,
- The borrower makes a formal, written request to remove PMI from their payment.

Today the mortgage loan industry is a thriving business offering a multitude of different ways to finance real estate. Many of the mainstay programs of the mortgage industry were designed to meet the needs of the various types of borrowers (while still making lenders a healthy return on their investments). We will examine several of the most commonly used mortgage products, and illustrate how they are suited to specific types of buyers.
**Veterans Administration (VA) Loans**

We’re starting with VA loans because the segment of the borrower population for which they are designed is obvious; to get a VA home loan one must have served in the US military or be the un-remarried widow of a soldier who dies in action. The exact definition of service that qualifies an individual for such a loan is in the “Eligibility” document at the end of this module. If a veteran intends to use his VA benefit to purchase a residence he should immediately order his Certificate of Remaining Eligibility (CRE) from the Veterans Administration. Having the CRE in hand is the only way to be absolutely certain that a borrower can get a VA loan, and how much loan he is entitled to.

Although it is possible for a veteran to have more than one VA loan outstanding at the same time, the total amounts of the mortgages may never exceed his CRE. Also, VA loans are only for primary residences. If a veteran is purchasing a second home, or if he is purchasing a rental property, 100 percent VA loans may NOT be used.

The veteran may file a request with the Veteran’s Administration on their web site, [www.VA.gov](http://www.VA.gov), to receive the Certificate of Remaining Eligibility. Also, the lender, upon receiving authorization from the veteran, may also request the CRE. In most cases, the lender will receive the CRE more quickly than the veteran.

An additional benefit to veterans lies in the down payment requirement; if certain conditions are met, veterans may purchase with NO down payment or with a lesser down payment and no PMI. VA loans are not intended only for veterans who have no money for down payment. They are primarily intended as a tangible thank you from a grateful nation for having served. For this reason the VA guarantees that if the veteran defaults on the loan it will be paid by the VA.

There is, however, the VA Guaranty fee that is a percentage of the loan amount. This fee may be paid in cash or the veteran may finance it over the life of the loan. The formula for calculating this fee is complex and is impacted by veteran’s branch of service, time of service and several other factors. It is strongly recommended that the lender be contacted for each case before quoting any dollar or percentage fee.

Residential properties financed under the regulations of the Veterans Administration must still be appraised, and the amount of the loan is based on this appraisal. When appraisal values do not equal sale prices, veterans may renegotiate with sellers to lower the price. If this negotiating maneuver fails, veterans who have the money may make up the difference by making a down payment in the amount of the shortfall.
In the case of new residential construction, there are guidelines for construction quality that must be followed and inspections are made periodically to ascertain that that materials and construction are within these guidelines. These inspections are not free, and any new construction contract for a residence to be financed under VA regulations must address the cost.

Builders may lose time waiting for these inspections, and time lost can be expensive (builders typically borrow money to build and daily interest is charged to them whether work is being done or not). These and other factors may add to the cost of a residence, thus we find that many purchasers of new construction who are veterans with down payment money may choose to use a different financing opportunity.

There are two possible exceptions to the VA inspection requirement: (1) houses that are less than one year old and have never been occupied may be allowed to substitute their city inspections in place of VA inspections, and, (2) if the veteran makes a down payment of ten percent.

To summarize, VA loans are made to veterans subject to the regulations of the Veterans Administration and may have no down payment, but are subject to appraisal value and (usually) market interest rates.

A veteran who served in the Vietnam conflict wants to purchase a residence using his VA eligibility. He bought his first home in 1978 using a VA loan and still owns the property. What should the veteran do in order to be positive that he can buy using his VA eligibility?

a. Make mortgage application with a lender  
b. Order his Certificate of Remaining Eligibility from the VA  
c. Provide the mortgage lender with a copy of his discharge papers  
d. Ask his real estate agent if he is qualified

The answer is b. A veteran’s Certificate of Remaining Eligibility is proof of the veteran’s ability to purchase using his VA eligibility.
Federal Housing Administration (FHA) Loans

A buyer who is not a veteran and who is qualified on income and credit to purchase but who is a bit short on down payment money may be a good candidate for a Federal Housing Administration (FHA) loan. Buyers must meet FHA credit qualifying standards, but these standards are somewhat relaxed in comparison to what is required for some other types of loans.

All lenders who offer FHA loans must be approved by FHA. Loans made under FHA guidelines by approved lenders are insured by FHA, meaning that FHA provides security for the loan over and above the security inherent in the real estate. Appraisers who appraise properties ensured by FHA must also be FHA approved.

The mortgage insurance premium that is charged monthly is a premium paid by the borrower that, in effect, serves to assist the FHA in continuing to offer its loan programs.

The down payment required by FHA is slightly less than five percent, which makes it easier for move-up buyers and, in some cases possible for first time buyers to purchase. There are many loan programs available under FHA, but easily the most popular is the Title II, Section 203(b) loan, often referred to as “203(b).” Using this program a buyer can finance up to approximately 96.5 percent of the value of a residential property (up to 4 units).

Other distinguishing features of FHA loans are:

- Most of the closing costs may legally be added into the loan
- There is a Mortgage Insurance Premium (MIP) that is an annual charge but is usually paid monthly, and usually for the life of the loan
- An additional MIP premium may be charged to be paid at the time of closing
- The maximum allowable loan varies by geographic region
- When used to finance new construction, FHA loans require special inspections unless the borrower is making a minimum down payment of ten percent of the sale price
- Manufactured homes may be financed using FHA-insured loans if the borrower owns the property on which the manufactured unit is located and also on lots in approved manufactured home developments
- Discount points* may be charged

*Discount points are up-front interest charges made by lenders who wish to offer a lower interest rate on loans. They are often charged to help purchasers who are close to, but do not
actually, qualify at a slightly higher rate. Sellers may pay these discount points as long as the maximum amount paid by the seller on any FHA loan does not exceed six percent of the costs normally paid by the buyer. FHA loans can be fixed rate, but can also be adjustable rate, depending of the program selected.

Some homebuilders may choose to build their new house under FHA guidelines. If they do so, much like VA, the FHA requires periodic inspections during construction. Builders who produce houses near the low end of new construction values are the most likely to accept this cost because they are aware that the majority of their buyers will require FHA mortgage loans to be able to buy.

Unlike new construction, existing homes can be purchased using FHA loans with a simple appraisal. FHA-certified appraisers are expected to report any structural problems as part of their appraisal (with pictures of the problem). It is not unusual for FHA to require sellers to make repairs to properties before a loan will be made.

Sellers are sometimes reluctant to make costly repairs before the sale actually closes to avoid having spent money for a deal that doesn’t happen. This potentially thorny problem can be solved if the designated listing agent of the seller has competently advised the seller of what to expect when the property is appraised.

The listing agent who researched sales in the neighborhood of a listing and found that fifty percent or more sales have been with FHA financing, that listing agent should inform the sellers to make needed repairs before the house is put on the market.

Appraisers, who come to properties needing obvious repairs, and plenty of them, are exercising prudent judgment when they examine these properties very, very carefully. It is good for us to remember that the FHA is insuring up to 96.5 percent of the value of the property at the time of closing. If the property must be foreclosed, the better condition it’s in when it’s sold, the closer FHA will come to recouping its insured mortgage amount.

There always are going to be some sellers who are not willing or who are not able to spend money repairing a residence before it is sold. Listing agents in this situation have a hard decision to make. If they list the property without repairs they are betting that it will sell to a cash buyer, to a buyer with sufficient cash to make an increased down payment or that the seller, when presented with an offer from a qualified buyer, will bite the bullet and make the required repairs.
A licensee representing an FHA buyer also has a choice. That choice is between spending a lot of time on a deal that has only a slight chance of closing because of the condition of the property or of choosing to show only properties in acceptable condition to FHA. Especially if you are relatively inexperienced, it makes a lot of sense to show property that’s in good condition. As you gain experience you will become more knowledgeable about what can be fixed cheaply and what costs a lot of money. Until you gain this knowledge, you might want to leave the tough properties to others.

You will also, in time, become familiar with the personalities of the various FHA appraisers. Although all have the same certification there is a certain amount of leeway granted them by FHA. This means that a repair that one will insist on might be overlooked entirely or modified by another. Any repair that is overlooked will certainly NOT be a critical foundation or frame problem, but while one may demand an entirely new roof another might ask for repairs to an existing roof.

This is a personality quirk that can mean thousands of dollars to a seller or, later, to the buyer. If you are representing the seller, it’s a wonderful day when a twelve-year-old roof passes the FHA appraisal with only a repair requirement. On the other hand, the buyer will be faced with replacing a roof sometime in the near future.

You are not allowed to choose who will appraise a property for FHA. If you are the listing agent, and you have good reason to believe that the house will sell with FHA financing you might consider advising the seller to get the FHA appraisal done before the house goes on the market. That appraisal stands for ninety days, and the seller will know in advance the repairs he will have to make.

If the appraised value and/or the cost of repairs mean that the seller can’t afford to sell the property, he buys that information for the cost of the appraisal. The listing agent is saved the time, money and mental anguish of shepherding a listing that will not close without miraculous circumstances arising.

Most first time home buyers use either VA or FHA financing, and of the two FHA is more often used. Many newly licensed agents find themselves working with first timers. It seems to be a good pairing since the buyers have no yardstick for comparison of license competence and instead look for an individual who sincerely wants to help and has the time to do so. Learning the ins and outs of FHA financing has launched and kept afloat many careers in residential real estate sales.
Your listing has been sold by a cooperating agent under an FHA loan. The appraisal has been made and the appraiser noted, and FHA demands, that a detached garage in the back yard be torn down. The garage is admittedly not in good repair, but the seller currently uses it to store his lawnmower and an assortment of other items of little or no value. He will do the tear down, but only after the loan closes. The loan, of course, will not close until the garage has been removed. How do you get from this point to closing?

- Inform the seller your broker will sue for commission if he does not close
- Negotiate with the seller to install a relatively inexpensive metal or plastic shed to house the lawnmower
- Have your broker and the broker’s attorney meet with you and the seller so that he will understand his obligations under the listing contract
- Lend the seller the money with the understanding he will repay you at closing

The correct answer is b.

**Conventional Loans**

A conventional loan is one that is secured by investors, but neither insured by the FHA nor guaranteed by VA. Conventional loans can be fixed rate or adjustable rate. Adjustable rate mortgages are those that start at one rate and adjust at time intervals written into the mortgage. Also written into adjustable rate mortgages are two other important statements: the index which will be used to adjust the interest rate and the maximum rate beyond which the mortgage rate cannot be adjusted.

When interest rates are low there is little call for adjustable rate mortgages. The prime time for adjustable rate mortgages is when interest rates on fixed rate mortgages is so high that they impair the ability of borrowers to purchase property, even when rates are backed down using discount points.

Discount points, as discussed earlier, discount points are front-end interest payments used to reduce the interest rates on mortgages. Lenders decide how many discount points will be charged to reduce the interest rate by one point. The number may vary from lender to lender but the rule of thumb is considered one point per one percent of the mortgage amount.
Within certain guidelines either sellers or borrowers may pay discount points, and, when the device is used, discount points are often subjects of extended negotiation over who will pay.

Traditionally conventional loans are made for eighty percent of the purchase price with the buyer making a down payment of twenty percent. When this is the case, there is no private mortgage insurance (PMI). Of course, if a twenty percent down payment is required a very large segment of potential buyers are unable to buy.

Lenders realized this and invented the PMI system to allow borrowers to purchase with less than a twenty percent down payment. In today’s mortgage market buyers may borrow ninety or ninety five percent of the purchase price using standard mortgage programs. In special programs, even lower down payments are allowed.

Borrowers should think of PMI as a savings program enforced by a bank that can literally remove the roof from over their heads if they fail to make regular installments, because that is exactly what it is. The big advantage is that buyers don’t have to wait until they save up twenty percent for a down payment. This is critical when home values are rising because the amount that has to be saved continues to rise and often rises completely out of reach of many potential borrowers.

The big disadvantage is that paying PMI is a very, very expensive savings plan. Lenders collect PMI then pay it out to special insurance companies that are specifically for that purpose. Lenders, of course, collect a fee for handling PMI, as they should since they are doing half of the clerical work to collect it. The insurer calculates that and all other fees into the premium.

Borrowers who take the time to calculate the amount of PMI they will pay while it is in effect are appalled at just how many times they will pay out the difference between their down payment and twenty percent of the sale price, but they are few and far between. Most borrowers just want to know how much the monthly payment will be and if they qualify to pay it.

For good or ill, PMI has become a mortgage industry standard. It will certainly continue as long as first time buyers continue to disdain properties (if any) their savings would allow them to buy if they made a twenty percent down payment. This is very good news for real estate licensees, because first time buyers are the base of the home buying pyramid. Without first time buyers there would not be several layers of move-up buyers, second home buyers, McMansion buyers and, eventually, empty nest buyers.
Candidates for conventional loans will be well-employed, have reasonably good credit ratings and some discretionary money in savings. They will also usually be move-up buyers who are probably receiving a profit from the first timer house they’re selling.

Second homes must be a minimum of 60 miles from the borrowers’ principal residence, or, if closer, on waterfront property. There is no private mortgage insurance for second homes, meaning that the minimum down payment is twenty percent.

Whether new or existing construction, lenders do not require inspections other than that done by the appraiser. This does not mean that buyers will not want a property condition inspection prior to closing. That is a different type of inspection that has no involvement by the lender.

Appraisers must be certified by the state, but beyond that there are no certifications specifically for conventional loans. It should be noted here that many appraisers voluntarily join professional appraiser societies. Members of these societies include appraisers who are VA and FHA certified as well as those who appraise for conventional loans. Membership carries with it a pledge to ethical behavior and a professional training element.

Lenders who make conventional loans may also be approved to make VA and FHA loans. It is prudent practice to use lenders who make government backed and conventional loans, particularly when buyers are first timers or when there is a language barrier. There are times when communication problems result from buyers not understanding what they are being asked, either through inexperience or language disconnects.

All of these problems come into the glaring spotlight when verifications of employment, income, credit and savings return to the lender’s loan processor. A buyer, who, based on his application information, should have been a good candidate for a conventional loan, may turn out to be better served by an FHA loan when the verifications return. It happens. When it happens a good Plan B, the FHA loan, can be put into effect without delay if the same lender is used.

There probably will be a new appraisal even if the original was made by an appraiser certified by FHA. Although the appraised value may not change, there are different paperwork requirements and different photos required for FHA. There is also a more detailed repair list. Thus, a genuine second, different, appraisal must be made and charged for.

Conventional loans are easier on paperwork but he costs are a bit higher, there are more restrictions on the amount of seller contribution to closing costs, buyer’s credit scores, savings and earnings must be higher than for VA or FHA loans.
A contract to purchase and sell has been signed by buyer and seller, subject to the buyer getting a conventional loan. For reasons known only to him, the buyer has incorrectly reported his income at a higher amount than is verified by his employers. The buyer no longer qualifies for a conventional loan but the loan originator feels he has a very good chance to be approved for an FHA loan. Is the contract to purchase and sell still valid?

a. Yes. It’s a small change.
b. No. The seller may now have more costs to pay.
c. Maybe. It depends on how the contract is written.
d. Maybe. It depends on whether or not the seller thinks he can resell the property.

The answer is c. If there is wording in the pre-printed contract to cover changes in financing the contract is still valid. If the licensees involved were experienced enough they may have added an addendum to the pre-printed contract covering changes in type of financing, costs and who will pay. Otherwise, unless the sellers agree to the changes, the contract is no longer binding.

**Recommending Lenders**

It is very common for experienced licensees to have a favorite lender who will go the extra mile in order to keep their business. While going the extra mile is a great feature of a lender, the licensee who recommends only one lender (or property inspector, insurance agent, etc.) is taking a giant liability risk.

Licensees who wish to avoid liability risks and the money and effort spent to cure them will recommend several lenders. There are times when even the sharpest loan originator or processor will miss something in the massive stack of forms required for loans. This can lead to a loan that should have been approved being rejected.

If the true situation comes to light, the lender and the real estate licensee who sent the borrower to “the best mortgage banker in town” could be in serious legal trouble. The good news is that, while the banker may be looking at jail time the licensee is only looking at money loss. Of course, the bad news is that the licensee may be looking at money loss. It’s best to cover yourself by recommending several lenders and allowing the borrower to select one.
**Benefit to Buyers/Sellers**

When the buyer has a list of qualified lenders to choose from he will not be as likely to feel that he has entered some conspiracy of licensees and lenders. Since he will have had input into making the choice he will probably feel more comfortable with giving the loan originator complete and accurate information. In turn, this leads to swifter completion of the loan process.

Sellers will have the peace of mind that comes with knowing purchasers are actively involved in the mortgage loan process. This is no small thing, as sellers who are paranoid about whether or not the loan will close tend to bombard the listing agent (and sometimes the selling agent as well) with lots of telephone calls regarding the progress of the loan.

There are times when there simply is no progress to report, such as the interval between the date verification forms are sent out from the lender to their appropriate recipients and the time the recipients return them in completed form. No number of telephone calls to the lender will in any way modify the time this process takes.

This is equally as true when savings are being verified by the very same bank in which the mortgage loan is being processed as it is when there are two financial organizations involved. It takes as long as it takes. Thus, nervous sellers who call and call and call everyone involved in the process get no satisfaction. Sellers who have a higher level of confidence that the sale will close tend to call less.

If something goes wrong with buyers #1 choice lender, buyers and sellers both will have the comfort that comes with knowing the next lender they choose might produce different results. This is pretty much a last resort, as there are costs attached to switching lenders. Having a workable Plan B is always a good idea in real estate sales.

The worst has happened and a buyer’s application for a mortgage has been rejected by Big Lender Bank and Trust. You are representing the buyer and have good reasons to believe the loan would be approved by Small Lender and Company. What are the first things you need to know in order to switch lenders in mid-stream?
a. How much money will the buyer and seller lose over the rejected loan and how much more money will it cost to switch lenders
b. If the property condition inspection(s), appraisal, etc. are transferable to the new lender
c. If the switch will impact the contract closing date, and if closing date changes radically, will that kill the contract
d. All of the above

The correct answer is d.

Preparing borrowers for loan application appointment

Cost/Benefits Comparison of Lenders and Loans

Buying mortgage money is a lot like buying groceries; prices for each of the services purchases from mortgage companies will vary. The trick is to make a comparison chart that will allow you and potential borrowers to make a meaningful comparison between lenders.

Unfortunately, it isn’t possible to make a single chart that will be good forever, or even until you have the next purchaser. Everything about mortgage fees is subject to change and does so with bewildering regularity.

Fortunately, technology comes to the rescue! Online web sites such as [www.mortgagemavin.com](http://www.mortgagemavin.com) offer interactive charts that will compare two different mortgages; all you or the borrower must do is enter the correct information into the correct boxes and let the program do the work. If you want to compare more than two mortgages, you’ll have to enter two at a time, but the possibility of a calculation error is almost non-existent.

If you are not quite high tech, you can make a comparison chart of your own that will do the same thing, but the time and trouble spent making your own chart and praying your math skills are up to the challenge could just as easily be spent learning to use an online comparison chart.

Whether you use high or low tech doesn’t matter. What does matter is that you have a way to show purchasers a way to select using hard data, not the “gut feelings” that you may trust but the buyer may think are a dandy way for you to justify steering them to a lender who is friendly to you (but maybe not to them?).

When the money comes up even for two or more lenders, then it’s time to mention the other buyers one or more have made happy homeowners, especially if those past customers are willing to write testimonials for you to pass on to new clients and customers.
Lender Reliability Issues

The word tends to get around quickly on the real estate grapevine when a lender consistently fails to get loans approved. There is a mountain of paperwork involved in getting a loan approved. Paperwork, such as the original application, credit report, and verifications of savings, employment and past rental payment record (if any), ordering appraisals, etc. is essential to securing loan approval and must be pushed through the pipeline by loan processors as quickly as possible so that any delays will be caused by failure of the completed documents to be returned. Some or all of it will almost always be delayed.

Competent loan originators and processors know this and speedily get the documents to their respective responders. They also know which will have to be reminded to push the paper back to them and which will push it back either incomplete or incoherent. They plan for these eventualities and find ways to prevent them from blowing up deals. When you encounter a competent lender, ask the borrower for a testimonial to share with other buyers.

Testimonials for lenders’ past successes are especially meaningful if the phrase “easy to work with” appears in them. Buyers, especially first timers, tend to approach the loan application with the same attitude a Catholic sinner approaches the confessional. Somewhere in their psyche there is rooted the belief that the lender will flush out the slightly late car payment or the month they were a bit short on the rent or the quarter some McDonald’s clerk once overpaid them in change.

It is possible that the lender will do exactly that (OK, maybe not the quarter), but it is also highly improbable that it will be held against the borrower unless it is part of a pattern of late and incomplete payments. Borrowers should be made aware that the lender is not their mother and does not need to be protected from their minor mistakes.

A lender who truly is Easy To Work With will put them at ease and motivate them to tell all from the start when it may be possible to repair any unsavory items on their credit reports, will explain that sometimes it is better to use some of their savings to pay off specified bills and make a smaller down payment and other maneuvers that are the basis for loan originator success in dealing with borrowers.

The easy to work with lender makes the borrower feel part of a team that includes lender, buyer, seller, and all real estate licensees involved in the transaction. This is the ideal climate for getting a loan approved, and having the approval as quickly as humanly possible.

No matter how many of your fellow agents “just love a lender to death,” if you are uncomfortable with that lender your buyer will often detect it and, in turn, may also feel uncomfortable. When you are completely inexperienced you have no acceptable choice other
than to follow the recommendations of more experienced agents in compiling your list of lenders to recommend to buyers.

Some of these lenders will work with you throughout your career and you will be very happy with them. Others will fall from your list and be replaced by new lenders. The most important thing to remember is that results trump personality. If you have to choose between a loan originator who has a great personality but doesn’t follow through to consistently get loans closed and another who could use a few public relations lessons but who consistently gets loans closed on time, go with your pocketbook and choose the one who gets results.

You have written your first contract on an office listing. The buyers are first timers, and so are you. They ask you to help them find financing. Your first act should be to

a. Call your broker for help
b. Ask the first three of your fellow agents that you see for recommendations
c. Look in MLS for the names of the last three agents who had closed listings in the same development
d. Get out the yellow pages

The correct answer is c. Agents who have recently sold properties in the same development are probably the current experts on the type of financing that will work and which lenders can do the best job. They will almost always share their knowledge with you, and you will have made contacts in the real estate industry.

The Loan Application

When to Make Application

The ideal time to make loan application is before customers ever see a single property. Few commercial buyers would make an appointment to see properties without first knowing they can buy (if they see something they like). This is because they tend to think like businessmen,
and they know their time is valuable. This is a lesson every real estate licensee must learn in order to succeed, and the earlier it’s learned the sooner you will be successful.

Try to keep in mind that although you want to make the most efficient use of your time, you should try very hard to avoid sending the message to customers that you don’t plan to give them all the time they need to feel comfortable. This is a balance that is harder for some of us to strike than others. If it seems to be a problem for you, put it on your list of things to work on.

The easiest way to use time efficiently without making clients feel rushed is to have a plan, and to share the plan with the customers. For example,

“Today we’re going to talk a bit about what you want the property you purchase to do for you, and the financial resources you’re planning to commit. Once we have a good idea of what we’re looking for, we’ll discuss lenders who can help us find the best loan to make it possible.”

You may have a detailed plan covering the entire transaction up to and including what moving in gift you plan to give them, but that is about all they can handle at one time. This probably is the biggest investment they will have made yet, and they’re nervous. Feed the plan to them in small doses so that they can remember and feel somewhat on top of the situation. Giving the plan out in small bits has the added benefit of allowing you to make changes if needed as you proceed through the transaction process.

Of course, the plan will change. Some buyers will come to you demanding to see property immediately, usually from a sign call when you are either the listing or duty agent. If asked to submit to a counseling session before seeing the property they very likely will hang up the telephone and call another licensee.

They may keep calling until they locate a licensee with enough brainpower to realize that all you can do with a telephone call is make an appointment. When you are eyeball to eyeball with them, that’s the time to show how much you care by suggesting a meeting with a loan originator.

The rule is this: make loan application before viewing property; if this is impossible or impractical, make loan application as soon as possible. Waiting until a buyer falls in love with a property to find out they can’t have it is the recipe for disappointment for all concerned. And, it makes you appear to not know what you’re doing. Especially when you are inexperienced, it’s important to boost the client’s confidence by giving the appearance of having a bit of a clue!
A buyer who walked into your open house Sunday afternoon calls Monday and says he wants to make an offer. From your discussion Sunday you know that he needs a loan to purchase and has not been preapproved or even prequalified for a loan. What do you say to this purchaser?

a. “Let’s get you to a lender to be prequalified today and we’ll write the offer tomorrow.”
b. “You have to be preapproved before we can submit an offer.”
c. “Meet me at the office in an hour and we’ll write an offer.”
d. “I’m playing in a golf tournament today. Can we do this tomorrow?”

The answer is c. Having a preapproved buyer is first choice, a prequalified buyer is second choice, but having a buyer willing to sign a contract and hand over a deposit is a good thing, too. Never let one of these get away.

**Documents to Bring to Application**

The clock starts running on contract time when an offer is made and accepted by buyer and seller. This is an absolutely terrible time to learn that one of the documents that will be required by the lender is lost, misplaced, misfiled or any other class of not being able to quickly be retrieved.

Some of the documents that may take a while to get if they’re not on hand are: cancelled (but unrecorded) mortgages, military discharge papers, veterans’ certificate of remaining eligibility, wills, probate documents, divorce decrees and property settlements. There are many more, but these are the most common.

It is easier on everyone concerned if buyers have a list of documents they will need for the lender IN ADVANCE of the loan application appointment. They still may not be able to find them in time for the appointment, but they will know to start looking or at least thinking about where they might be or where they can get duplicates.

Many sharp listing agents provide flyers with a “documents needed for loan application” list in their listings. This is a particular benefit when it is likely the buyer will be first timers, but almost all buyers will take one of these out of a flyer box and bring it home with them.
If you are not thrilled with the idea of a buyer you’re spending time with taking a flyer with another licensee’s name and contact information on it, you might consider making a list of your own. On paper that is a distinctive, easily found color.

Here is an additional list of information buyers will have to provide:

- A purchase contract, if you have one for the home you are buying
- Social Security numbers or individual taxpayer identification numbers for all borrowers
- Your home addresses for at least the past two years
- Current names, account numbers, and balances of all checking, savings, money market, retirement, and credit card accounts
- The address of your bank branch
- Checking and savings account statements for the past two to three months
- Your most recent pay stubs, W-2s, or other proof of employment and income verification
- Federal income tax returns for the past two years
- Evidence of any other income you receive (child support orders, Social Security award letters)
- Balance sheets and tax returns if you are self-employed
- Divorce settlement papers if applicable
- Canceled checks for rent or utility bill payments, to show payment history and amount of revolving debt
- Information on other consumer debts, such as credit cards, car loans, furniture loans, student loans, and department store credit cards
- Gift letters, if you are using gifts from parents, relatives or organizations to help cover the down payment or closing costs; gift letters state that the money you received is a gift and will not have to be repaid

If you think it isn’t your job to provide buyers with this list, here’s a tip for you: if you are only willing to do what you think is your job, you are going to have a very hard time achieving success in real estate sales.

Perhaps we should define the job, “real estate salesperson.” A real estate salesperson is a licensed agent who sells listed properties to qualified buyers. Period. Any legal assistance needed by buyers or sellers related to the transaction falls within our job description.
You are representing a buyer who works as a self-employed musician. If he has truthfully reported his earnings, you have reason to believe he will be able to buy. Should you be more or should you be less concerned about getting him preapproved before submitting an offer to purchase?

a. More
b. Less

The correct answer is a, for three reasons:

1. He’s self-employed and will have to provide significantly more documents to the lender as would any self-employed person,
2. He’s a musician, probably work while you and the lender sleep and sleeps while you work so may be difficult to contact, and,
3. He’s a musician, and while it may be profiling, he might not be a meticulous record keeper so much repair work may need to be done to his financial records.

Costs at Time of Application

Buyers often wonder why they are required to pay at application for a credit report, appraisal and application fees (if any). They often wonder why these fees are not reimbursed if the loan is rejected for any reason. After all, their good friend, the real estate licensee, is happy to work for free if the loan is rejected, so why not everyone else?

The reason is very simple. When the bank orders a credit report, the credit bureau charges the bank whether or not the credit report is favorable. There are no refunds, even when it can be proved that there are errors on the report. Ditto the appraiser and the clerks working for the lender who do the work that makes the lender need the application fee.

It should also be noted here that the fees paid for these services is significantly less than the commission the licensee will make if the sale closes, making the income gamble involved a little more understandable. There’s nothing to be gained by making a big point of this with buyers, they should simply be told that the other guys are compensated on one plan, we’re on another.
Another possible area for misunderstanding is on contracts where the seller will be paying some or all allowable closing costs. While a seller may be willing to reimburse the buyer, at closing, for some or all application costs as agreed in the contract, no seller will probably be willing to pay application costs for a buyer who may or may not be approved.

Buyers must have on hand at least the amount of cash they will need for down payments and application fees. This is fairly non-negotiable, and applies even to veterans who are making no down payment (unless there is a special program). Lenders are entitled to have the minimal peace of mind that comes with knowing buyers will have the ability to save a few dollars. After all, all properties will need some repairs, and buyers who can pay for needed repairs are more desirable customers for lenders.

You are the designated listing agent representing a property that is under contract to a buyer using a VA loan for 100% of the purchase price. The accepted contract also specifies that the seller will pay all allowable closing costs. The veteran made a $500 deposit, but that use up all his cash. The seller is very motivated to sell and will do anything his agent recommends. The buyer is equally motivated to buy. Is there any way the listing broker can lawfully allow him to use the $500 for the fees due at loan application?

a. No. A deposit is to be held by the listing broker until the transaction is completed or terminated.

b. Yes. With the agreement of the seller the existing contract can be terminated and the deposit returned to the buyer; a new contract is written showing a lesser deposit amount. The difference can be used for the buyer’s fees due at application.

The correct answer is b, but with a strong warning that this is a very risky solution to the problem. Either buyer or seller could refuse to sign the new contract; motivations have been known to change when a better deal comes into view. Both buyer and seller must be made aware of the risks before the original contract is nullified and the deposit returned. This is only feasible when the original contract will fail without taking action.
Role of Loan Originators and Processors

The job of the loan originator is theoretically to correctly and completely fill in the blanks on loan application forms. In actual practice, the excellent originator becomes an ad hoc credit counselor, confessor and advisor to borrowers, especially first timers.

The loan processor takes all the information gathered by the originator, adds all the information from verifications and appraisals and translates the entire mess into the forms that will be accepted by the investors who will ultimately own the loan.

A loan originator/processor team knows there is a triangular relationship between savings (or gift money), credit repair and loan approval. The first move many make after receiving verified documents is to determine if the potential borrower is qualified just as he stands. If he is, there is a flurry of documents, an appraisal and, if the appraisal is positive, a loan approval.

Other times the verified documents will have uncovered some fatal flaw in the application that only time and clean living on the part of the applicant will cure.

Lots of times, however, there will be a few bills that can be paid down to the point where they will not negatively impact the loan request, allowing the loan to be approved. If paying these bills down will necessarily lessen the amount of cash for down payment, perhaps the buyer can be shuffled from a 95% conventional loan to a 96.5% FHA loan, and so on. The financial magic performed by a competent originator/processor team can be truly amazing to watch.

On the other hand, an incompetent originator/processor team can and will kill a deal that has the slightest flaw, and may do serious damage to a flawless deal. Most times the damage is done by individuals who are pursuing the wrong career path. Mortgage lending is a job for seriously detail oriented individuals who actually enjoy getting every little thing exactly right on every single loan. Big picture people persons should not attempt to do this job.

Other times individuals will develop or have increasing problems with substance abuse which do not mix well with highly detailed jobs. And, always, some persons who have been very competent in the past will encounter personal or health problems that render them unable to perform as they have in the past.

For all of these reasons and many more it is a good practice to develop a relationship with a number of lenders who do a competent job getting loans approved. It is equally necessary to always keep an eye on how the loan is progressing rather than turn it over to the lender and expect they will always do the job well.
You are attending a loan application at the request of your buyer client. The loan originator continuously takes calls on her cell phone that seem to be of a personal nature. Between calls she seems to have problems remembering which forms she has filled in and can’t seem to decide what type of loan will be best for the buyer. Should you take any action before the buyer signs the loan application forms and pays the fees?

a. No. The buyers chose this lender. It’s no longer any of your business.
b. Yes. This lender was chosen from your list, and you want the loan to close. It’s your business.

The correct answer is b. Even if you have to text the buyer a message or pass them a note, somehow you should find a way to get a private word with the buyer to be sure he wants to continue with this lender.

**Your Post Loan Application Duties**

Yes, there are still duties to be performed after the loan application that are directly related to financing. Perhaps the most important duty is to keep the buyer updated on the progress of the loan. This is not possible unless you are keeping watch over the lender.

There are going to be times when there is little to report, such as the time between when the verification forms are sent out and when they return, but if this time stretches out longer than two weeks, it’s time to nudge the loan originator.

During this time the appraisal may be done as well. When the buyer’s ability to qualify is in question, some lenders may allow the buyer a great privilege and wait to order an appraisal until all the verifications are in. If the verifications make it an impossibility to approve the loan, the appraisal fee may be returned to the buyer. Note that this is not standard practice, it is very much a favor done in a business where favors are very few.

You must make a clear arrangement with lender, if you want to inform the buyer clients when their loan has been approved (or rejected). Otherwise, they will call the applicant. Everyone is usually very happy when the loan is approved. When the loan is rejected, and you want to continue a relationship with the client, tactfully delivering the bad news can be a good way to further the relationship.
There are many reasons a loan may be rejected that can be cured with a bit of positive action on the part of the consumer. Most of these are related to credit, but some are due to unresolved personal situations. Although at the present time the problem(s) may render the consumer unable to buy, as soon as, for example, the blemishes are removed from the credit report or children who are 17.5 years old become 18 and the consumer no longer has to pay child support, eligibility is fully restored.

There are other post application duties: overseeing property inspections of all kinds, seeing that any repairs covered by the contract are made and reviewed by the buyer, accompanying the buyer to measure for carpets, paint, window coverings, furniture, appliances, etc. This is not only part of your job; it is prime time to let the buyer know you’re available to help any of their friends, relatives, coworkers, etc. with their real estate needs.

During this time period you will also want to supply the buyer with an up-to-date list of utility providers so that utility service can be changed from the seller’s account to theirs. You should also have, in writing and signed by the buyer and seller, a firm date when this transfer will take place.

Buyer’s Post Loan Duties

The time period between making loan application and loan closing is one of the most active for most buyers. Most people hate paperwork and develop a kind of paperwork-specific amnesia. Both you and the loan originator have given them lists of the documents that will have to be provided by them in order for the loan to be approved. They will swear they never heard of the lists, the documents, and are pretty sure you told them you’d take care of everything for them. They still have to dig up the original documents or get acceptable copies.

They will also quite often insist there is no need for them to be present at the various property and/or termite inspections. They will assume you will be there (and you should), but they should also be there following the inspectors and observing any faults first hand. They are there to have a more complete understanding of any problems with the property. You are there for the same reason, and also to point out which problems (if any) the seller is obligated to repair.

During this time the buyers should also contact the utility companies that will be supplying electric, gas, water, sewer, telephone, cable, etc. to the property. Buyers who are efficient at this process can often save re-connect costs because their service will be scheduled to begin at the point when the seller’s ends. All that is necessary for the utility service provider to do is bill correctly.
Final Jobs

Another task for the buyers is to select a closing company or attorney. Some will want to use an attorney they know. Some will want you to choose. You should give them a list of closing companies that are acceptable to the lender, for reasons we discussed previously.

In cooperation with the lender, the closer and all principals to the transaction, you will orchestrate a closing time. You will ensure that all concerned know the date, time and place of closing by sending written notice. Email is acceptable for this purpose, but be sure you request a delivery receipt and check up by telephone or in person if no receipt is returned within 24 hours.

You will attend the closing and, while there, will look pleasant and keep as quiet as possible. This is the closer’s show, not yours, and you could probably use a little rest.

When the closing is successfully completed, thank everyone for their cooperation and go on your way.

You have just written a contract for a buyer and accompanied them to the loan application. From the point of view of these buyers, what is the best time for you to spend a week at the beach?

a. Next week
b. Week after next
c. Anytime, your work is done
d. Never, something might go wrong

The correct answer is a. The week following loan application is likely to be the time when you are needed least because documents will go out for verification and not begin to return until the following week.
In your real estate career you will learn much more about financing than this module could possibly encompass. From the vast universe of financing knowledge, this course tried to extract the information that will be of most value to you in your first two years in the real estate business.

Real estate finance is very much a moving target. Every effort was made to give you the most accurate and timely information but it is possible for a rapid change to render some of it inaccurate and/or untimely. Please be on the alert for the possibility of changes, and, when they are found, alert the LREC so changes can be made.

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VA Eligibility

You must have suitable credit, sufficient income, and a valid Certificate of Eligibility (COE) to be eligible for a VA-guaranteed home loan. The home must be for your own personal occupancy. The eligibility requirements to obtain a COE are listed below for Service members and Veterans, spouses, and other eligible beneficiaries.

VA home loans can be used to:

- Buy a home, a condominium unit in a VA-approved project
- Build a home
- Simultaneously purchase and improve a home
- Improve a home by installing energy-related features or making energy efficient improvements
- Buy a manufactured home and/or lot.

Eligibility Requirements for VA Home Loans

Service members and Veterans

To obtain a COE, you must have been discharged under conditions other than dishonorable and meet the service requirements below:
<table>
<thead>
<tr>
<th>Status</th>
<th>Qualifying Wartime &amp; Peacetime Periods</th>
<th>Qualifying Active Duty Dates</th>
<th>Minimum Active Duty Service Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>WWII</td>
<td>9/16/1940 - 7/25/1947</td>
<td></td>
<td>90 total days</td>
</tr>
<tr>
<td>Post-WWII</td>
<td>7/26/1947 - 6/26/1950</td>
<td></td>
<td>181 continuous days</td>
</tr>
<tr>
<td>Korean War</td>
<td>6/27/1950 - 1/31/1955</td>
<td></td>
<td>90 total days</td>
</tr>
<tr>
<td>Post-Korean War</td>
<td>2/1/1955 - 8/4/1964</td>
<td></td>
<td>181 continuous days</td>
</tr>
<tr>
<td>Vietnam War</td>
<td>8/5/1964 - 5/7/1975 *For Veterans who served in the Republic of Vietnam, the beginning date is 2/28/1961</td>
<td></td>
<td>90 total days</td>
</tr>
<tr>
<td>Post-Vietnam War</td>
<td>5/8/1975 - 9/7/1980 *The ending date for officers is 10/16/1981</td>
<td></td>
<td>181 continuous days</td>
</tr>
<tr>
<td>24-month rule</td>
<td>9/8/1980 - 8/1/1990 *The beginning date for officers is 10/17/1981</td>
<td></td>
<td>• 24 continuous months, OR</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• The full period (at least 181 days) for which you were called or ordered to active duty</td>
</tr>
<tr>
<td>Gulf War</td>
<td>8/2/1990 - Present</td>
<td></td>
<td>• 24 continuous months, OR</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• The full period (at least 90 days) for which you were called or ordered to active duty</td>
</tr>
<tr>
<td>Currently On Active Duty</td>
<td>Any</td>
<td>Any</td>
<td>90 continuous days</td>
</tr>
<tr>
<td>National Guard &amp; Reserve Member</td>
<td>Gulf War</td>
<td>8/2/1990 - Present</td>
<td>90 days of active service</td>
</tr>
<tr>
<td></td>
<td>• Six years of service in the Selected Reserve or National Guard, AND</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Were discharged honorably, OR</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Spouses

The spouse of a Veteran can also apply for home loan eligibility under one of the following conditions:

- Un-remarried spouse of a Veteran who died while in service or from a service connected disability, or
- Spouse of a Service member missing in action or a prisoner of war
- Surviving spouse who remarries on or after attaining age 57, and on or after December 16, 2003

Note: A surviving spouse, who remarried before December 16, 2003, and on or after attaining age 57, must have applied no later than December 15, 2004, to establish home loan eligibility. VA must deny applications from surviving spouses who remarried before December 6, 2003 that are received after December 15, 2004.

- Surviving Spouses of certain totally disabled veterans whose disability may not have been the cause of death

Other Eligible Beneficiaries

You may also apply for eligibility if you fall into one of the following categories:
• Certain U.S. citizens who served in the armed forces of a government allied with the United States in World War II
• Individuals with service as members in certain organizations, such as Public Health Service officers, cadets at the United States Military, Air Force, or Coast Guard Academy, midshipmen at the United States Naval Academy, officers of National Oceanic & Atmospheric Administration, merchant seaman with World War II service, and others

Restoration of Entitlement

Veterans can have previously-used entitlement "restored" to purchase another home with a VA loan if:

• The property purchased with the prior VA loan has been sold and the loan paid in full, or
• A qualified Veteran-transferee (buyer) agrees to assume the VA loan and substitute his or her entitlement for the same amount of entitlement originally used by the Veteran seller. The entitlement may also be restored one time only if the Veteran has repaid the prior VA loan in full, but has not disposed of the property purchased with the prior VA loan. Remaining entitlement and restoration of entitlement can be requested through the VA Eligibility Center by completing VA Form 26-1880.

U.S. Department of Veterans Affairs - 810 Vermont Avenue, NW - Washington, DC 20420
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