



Real Estate Practice in Indiana

Provided by the
Listing Leaders Academy



Tips for the Indiana content

The same...only different

- Instruct more off the slides
- Packets follow closely but not perfectly
- We will highlight test questions during the quiz
- The first 3 Units (25, 26, 27) are the most important

Unit 25 The Indiana Regulatory Environment

Learning Objectives

- Definitions
- The Real Estate Commission
- License Law Enforcement
- Recovery Fund, Investigative Fund

The Indiana Regulatory Environment

Definitions

The Real Estate
Commission

License Law
Enforcement

Recovery Fund,
Investigative Fund

Definitions

- ❑ **Real estate**
 - any right, title, or interest in real property

- ❑ **Licensee**
 - a person who holds a license issued under Title 876

- ❑ **Broker**
 - a licensed person who sells, buys, trades, exchanges, options, leases, rents, manages, lists, appraises real estate or negotiates or offers to perform any of those acts for consideration under the auspices of a managing broker

The Indiana Regulatory Environment

Definitions

The Real Estate
Commission

License Law
Enforcement

Recovery Fund,
Investigative Fund

Definitions

☐ Client

- person who has entered into an agency relationship with a licensed broker

☐ Customer

- person who is not a client but who is receiving services by a licensed broker

☐ Sanction

- a disciplinary action taken by the real estate regulatory board against a practitioner

The Indiana Regulatory Environment

Definitions

The Real Estate
Commission

License Law
Enforcement

Recovery Fund,
Investigative Fund

Definitions

- ❑ **Reprimand**
 - a sanction imposed for real estate law or professional standard violations

- ❑ **Probation**
 - A sanction requiring the practitioner to meet designated requirements as a condition for ending the probationary status

- ❑ **Suspension**
 - A sanction prohibiting the real estate practice until the suspension has been lifted

The Indiana Regulatory Environment

Definitions

The Real Estate
Commission

License Law
Enforcement

Recovery Fund,
Investigative Fund

Definitions

❑ Summary suspension

- a 90-day suspension imposed whenever the regulatory board finds the practitioner represents a clear and immediate danger to the public

❑ Revocation

- license is permanently revoked; individual may apply for a new license after 7 years

❑ Licensing agency

- the Indiana Professional Licensing Agency which was established by Indiana Code

The Indiana Regulatory Environment

Definitions

**The Real Estate
Commission**

License Law
Enforcement

Recovery Fund,
Investigative Fund

The Real Estate Commission

Purposes

- ❑ to protect the public interest by
 - Encouraging high standards of knowledge and ethical practices
 - Disciplining dishonest, fraudulent, or criminal brokers
 - Disciplining violators of rules and codes

The Indiana Regulatory Environment

Definitions

The Real Estate Commission

License Law Enforcement

Recovery Fund, Investigative Fund

The Real Estate Commission

Scope of authority

- ❑ Administer and enforce real estate codes

Principal powers

- ❑ Adopt, implement rules
- ❑ Enforce Title 876
- ❑ Implement standards for competent practice
- ❑ Regulate licenses
- ❑ Manage disciplinary process

The Indiana Regulatory Environment

Definitions

**The Real Estate
Commission**

License Law
Enforcement

Recovery Fund,
Investigative Fund

The Real Estate Commission

Structure

- ❑ Consists of 12 total members
 - 9 district members with 5 years of real estate business experience
 - 1 real estate member at large with 5 years of real estate business experience
 - 2 citizens with no real estate business experience

The Indiana Regulatory Environment

Definitions

**The Real Estate
Commission**

License Law
Enforcement

Recovery Fund,
Investigative Fund

The Real Estate Commission

Structure (cont.)

- Members serve 4-year term
- Members appointed by governor
- Members elect chairman and vice chairman
- Professional licensing agency provides executive director who is not a member

The Indiana Regulatory Environment

Definitions

**The Real Estate
Commission**

License Law
Enforcement

Recovery Fund,
Investigative Fund

The Real Estate Commission

Commission operating functions

- Administer and enforce title 876
- Inspect licensees' records
- Adopt an official seal
- Maintain the commission's office
- Report and deposit collected funds
- Approve surety bonds

The Indiana Regulatory Environment

Definitions

The Real Estate
Commission

License Law
Enforcement

Recovery Fund,
Investigative Fund

License Law Enforcement

Violations, prohibitions per IN code, rules

- Practicing real estate without a license
- Guilt of a crime that impacts competent practice or endangers public
- Fraud
- Cheating
- False advertising

The Indiana Regulatory Environment

Definitions

The Real Estate
Commission

License Law
Enforcement

Recovery Fund,
Investigative Fund

License Law Enforcement

Violations, prohibitions, rules (cont.)

- Alcohol or drug addiction
- Dealing in sex crimes
- Nonpayment of child support
- Corrupting appraiser

The Indiana Regulatory Environment

Definitions

The Real Estate
Commission

License Law
Enforcement

Recovery Fund,
Investigative Fund

License Law Enforcement

Investigations, hearings

- ❑ Complaint must be in writing and signed by complainant
 - filed with Consumer Protection Division to be reviewed, investigated, and resolved
- ❑ Complaints with merit sent to Commission for resolution within 30 days
- ❑ If no resolution, then complaint is investigated by Division for prosecution
- ❑ Commission holds hearing and imposes sanctions if guilt established

The Indiana Regulatory Environment

Definitions

The Real Estate
Commission

License Law
Enforcement

Recovery Fund,
Investigative Fund

License Law Enforcement

Disciplinary sanctions

- License revocation or suspension
- Practitioner censure
- Reprimand letter
- Probation
- Civil penalty
- Consumer restitution
- Summary suspension

The Indiana Regulatory Environment

Definitions

The Real Estate Commission

License Law Enforcement

Recovery Fund, Investigative Fund

Recovery Fund, Investigative Fund

Investigative fund

- ❑ Used for administering and enforcing real estate regulations
- ❑ Used for investigating, taking action against real estate and appraisal fraud
- ❑ Administered by attorney general and professional licensing agency
- ❑ Funded by broker fee, civil penalties, appraisal company registration fees, fund investment proceeds

The Indiana Regulatory Environment

Definitions

The Real Estate
Commission

License Law
Enforcement

**Recovery Fund,
Investigative Fund**

Recovery Fund, Investigative Fund

Recovery fund

- Used to cover damage claims against licensees for fraud, unlawfully obtaining money or property
- Must be claim for actual cash loss with final court judgment
- No attorney fees or punitive damages covered

The Indiana Regulatory Environment

Definitions

The Real Estate
Commission

License Law
Enforcement

**Recovery Fund,
Investigative Fund**

Recovery Fund, Investigative Fund

Recovery fund (cont.)

- \$20,000 limit per claim
- \$50,000 aggregate lifetime limit per licensee
- If fund's balance falls below \$450,000, licensees surcharged to raise balance to \$600,000

Key Takeaways



Unit 33 Federal Income Tax Impacts

Provided by the
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Federal Income Tax Impacts

Learning Objectives

- Definitions
- Income Tax Deductions
- Mortgage Interest Credit
- Sale of Personal Residence

Federal Income Tax Impacts

Definitions

Income Tax Deductions

Mortgage Interest Credit

Sale of Personal Residence

Definitions

- ❑ **Income tax** – tax paid to the state or federal or local government on received income
- ❑ **Earned income** – salaries, wages, tips, professional fees, and other amounts received as pay for work performed
- ❑ **Active income** – payment a taxpayer receives for performing services, such as wages, salaries, bonuses, tips
- ❑ **Passive activity income** – income received from rentals, limited business interests, or other activities that do not involve investor material participation

Federal Income Tax Impacts

Definitions

Income Tax Deductions

Mortgage Interest
Credit

Sale of Personal
Residence

Definitions

- ❑ **Marginal tax bracket** – the tax rate that applies to income
- ❑ **Capital gain** – the amount received when an asset sells for more than its initial purchase price or basis
- ❑ **Realized capital gain** – the profit received when an investment sells
- ❑ **Short-term capital gain** – the amount of profit received when an asset sells after being held for less than 1 year

Federal Income Tax Impacts

Definitions

Income Tax Deductions

Mortgage Interest
Credit

Sale of Personal
Residence

Definitions

- ❑ **Capital loss** – when an asset is sold for less than the purchase price
- ❑ **Basis** – amount invested in a property equal to cost of purchasing the property
- ❑ **Adjusted basis** – the purchase price plus capital improvements, minus depreciation
- ❑ **Depreciation** – a reduction in the value of an asset over time resulting from usage, wear and tear and depletion
- ❑ **Appreciation** – an increase in the value of an asset over time

Federal Income Tax Impacts

Definitions

Income Tax Deductions

Mortgage Interest Credit

Sale of Personal Residence

Definitions

- ❑ **Deduction** – a deductible expense subtracted from gross income to reduce the amount subject to tax
- ❑ **Credit** – a direct reduction of taxes owed as opposed to income deduction
- ❑ **Equity** – the current value of the home minus all loan balances
- ❑ **Points** – a form of interest paid to increase the yield on a mortgage
 - Enables lender to offer a lower interest rate

Federal Income Tax Impacts

Definitions

Income Tax Deductions

Mortgage Interest
Credit

Sale of Personal
Residence

Income Tax Deductions

- Income tax is paid based on tax brackets for taxable income
- Tax rates apply to taxable income after deductions and exemptions
- Indiana imposes state income tax
- Indiana counties impose local income tax

Federal Income Tax Impacts

Definitions

Income Tax Deductions

Mortgage Interest
Credit

Sale of Personal
Residence

Income Tax Deductions

- Deductions and exemptions lower tax owed
- Standard deduction applies to anyone not itemizing deductions
- Taxpayer should itemize deductions if itemized deductions are higher than standard deduction
- Itemizing deductions for state return may outweigh loss of not taking standard deduction on federal return

Federal Income Tax Impacts

Definitions

Income Tax Deductions

Mortgage Interest
Credit

Sale of Personal
Residence

Income Tax Deductions

- ❑ Spouses filing jointly must both use same method for deductions
- ❑ Can deduct state and local property taxes, including taxes on
 - non-income and investment properties
 - personal residence
 - second home
 - time-share property
 - vacant lot
 - income property and inherited property

Federal Income Tax Impacts

Definitions

Income Tax Deductions

Mortgage Interest
Credit

Sale of Personal
Residence

Income Tax Deductions

- ❑ Can deduct **interest** on
 - primary or secondary home
 - business building
 - investment building when itemizing

- ❑ In addition to standard or other itemized deductions, can take **expense deductions** for
 - IRA contributions
 - alimony
 - moving expenses
 - student loan interest

- ❑ Total deductions X marginal tax rate = net taxes saved

Federal Income Tax Impacts

Definitions

Income Tax Deductions

**Mortgage Interest
Credit**

Sale of Personal
Residence

Mortgage Interest Credit

- ❑ Mortgage interest deduction is subtracted from adjusted gross income
- ❑ Tax credit is subtracted directly from tax owed
- ❑ Most credits cannot reduce tax owed below zero, so low incomes do not receive full credit
 - exceptions include earned income credit which is fully refundable
 - child tax credit which is refundable if earnings exceed \$3,000 threshold

Federal Income Tax Impacts

Definitions

Income Tax Deductions

**Mortgage Interest
Credit**

Sale of Personal
Residence

Mortgage Interest Credit

- ❑ Mortgage Credit Certificate (MCC) Tax Credit – federal program for first-time buyers
- ❑ Mortgage credit rate based on amount of mortgage loan
 - the higher the loan, the lower the credit rate
- ❑ Mortgage interest credit is in addition to mortgage interest deduction
 - can be claimed each year up to \$2,000
- ❑ Lenders use estimated credit as additional income when qualifying loan

Federal Income Tax Impacts

Definitions

Income Tax Deductions

**Mortgage Interest
Credit**

Sale of Personal
Residence

Mortgage Interest Credit

- ❑ Homeowner eligibility for MCC credit
 - US citizen or permanent resident
 - first-time home buyer
 - qualified vet
 - home located in federally designated area
 - meet lender's credit, income, and loan requirements

Federal Income Tax Impacts

Definitions

Income Tax Deductions

**Mortgage Interest
Credit**

Sale of Personal
Residence

Mortgage Interest Credit

- Property eligibility for mortgage credit
 - sale price to meet county price limits
 - less than 5 acres
 - single family residence or detached unit within PUD
- Participating lender will provide mortgage credit certificate
- With \$2,000 credit limit per year, balance of credit can be carried forward to 3 more years

Federal Income Tax Impacts

Definitions

Income Tax Deductions

Mortgage Interest
Credit

**Sale of Personal
Residence**

Sale of Personal Residence

- ❑ Profit on sale called capital gain
- ❑ Capital gain exclusion
 - \$250,000 for singles
 - \$500,000 for married filing jointly
 - exclusion can only be used every 2 years

Federal Income Tax Impacts

Definitions

Income Tax Deductions

Mortgage Interest
Credit

**Sale of Personal
Residence**

Sale of Personal Residence

- ❑ Exclusion eligibility requirements
 - home owned and used as primary residence for 2 of past 5 years prior to sale
 - no use of exclusion on sale of another home during 2 years prior to sale of current home
 - home not acquired through like-kind exchange during past 5 years
 - owner not subject to expatriate tax

Federal Income Tax Impacts

Definitions

Income Tax Deductions


Mortgage Interest
Credit

**Sale of Personal
Residence**

Sale of Personal Residence

- ❑ Second-home capital gain exclusion
 - ❑ Can be used for second home if used as primary residence for 2 of 4 years
 - ❑ Taxpayer can live in primary home for 2 years and second home for 2 years within 4 years
 - ❑ Homes to be sold 2 years apart for exclusion on both homes to apply

Key Takeaways



Unit 32 Insurance, Warranties, Inspections

Provided by the
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Insurance, Warranties, Inspections

Learning Objectives

- Basic Insurance Concepts
- Standard Policy Features
- Home Warranties
- Inspection Basics

Insurance, Warranties, Inspections

Basic Insurance Concepts

Standard Policy Features

Home Warranties

Inspection Basics

Basic Insurance Concepts

Homeowner's insurance

- Protects assets and complies with lender requirements
- Homeowner should consider size, age, location, type, and value of property and contents and terms of policy
- Agents, insurance companies, and insurance brokers all sell insurance policies

Insurance, Warranties, Inspections

Basic Insurance Concepts

Standard Policy Features

Home Warranties

Inspection Basics

Basic Insurance Concepts

- ❑ People buy homeowners insurance to
 - protect their assets
 - comply with mortgage lender requirements
- ❑ Homeowners insurance covers
 - the home itself
 - personal property or contents of the home
 - liability for injury others may suffer on the insured property

Insurance, Warranties, Inspections

Basic Insurance Concepts

Standard Policy Features

Home Warranties

Inspection Basics

Basic Insurance Concepts

Force-placed homeowners insurance

- ❑ Lenders will force homeowners insurance on a mortgaged residence where the owner has let his/her voluntary policy lapse
- ❑ Premiums for lender-placed, or force-placed insurance, are considerably higher
 - Coverage is typically much less, limited to the structure itself

Insurance, Warranties, Inspections

Basic Insurance Concepts

Standard Policy Features

Home Warranties

Inspection Basics

Basic Insurance Concepts

Force-placed homeowners insurance (cont.)

- ❑ Premiums
 - Lender adds the amount of the premium payment to the mortgage payments
 - require the homeowner to pay the higher amount

- ❑ Force-placed insurance continues until the homeowner obtains a policy on his or her own.

Insurance, Warranties, Inspections

Basic Insurance Concepts

Standard Policy Features

Home Warranties

Inspection Basics

Basic Insurance Concepts

Homeowners insurance considerations

- The size and value of the property
- The potential for an increase or decrease in the property's value
- The value of the items contained in the home
- How depreciation will impact covered items if they need replacing
- The area where the property is located

Insurance, Warranties, Inspections

Basic Insurance Concepts

Standard Policy Features

Home Warranties

Inspection Basics

Basic Insurance Concepts

Homeowners insurance considerations (cont.)

- What weather conditions may threaten the home
- What type of structure is being insured
- Whether the property is rented or owner occupied
- The lender's coverage requirements
- The cost and terms of the policy

Insurance, Warranties, Inspections

Basic Insurance Concepts

Standard Policy Features

Home Warranties

Inspection Basics

Basic Insurance Concepts

Insurance agents

- Agents can either be
 - independent and sell insurance for any number of different companies
 - employed by only one company and sell insurance only for that company

Insurance, Warranties, Inspections

Basic Insurance Concepts

Standard Policy Features

Home Warranties

Inspection Basics

Basic Insurance Concepts

Independent v. employed agents

- ❑ Independents offer a larger selection of price and terms
 - Can reduce much of the shopping around for the best policy
- ❑ Independents may not offer certain policies that only company agents can sell
- ❑ In either case, homeowner can rely on agent to
 - provide coverage and loss prevention advice
 - help with any loss or claim

Insurance, Warranties, Inspections

Basic Insurance Concepts

Standard Policy Features

Home Warranties

Inspection Basics

Basic Insurance Concepts

Insurance companies

- ❑ Can sell insurance through
 - agents
 - sales representatives
 - the Internet
- ❑ Internet advantages
 - Provides tools for comparing similar coverage from different companies
 - Often allows the property owner to purchase the policy online

Insurance, Warranties, Inspections

Basic Insurance Concepts

Standard Policy
Features

Home Warranties

Inspection Basics

Basic Insurance Concepts

Insurance brokers

- ❑ Brokers work for the client and not an insurance company
- ❑ Insurance brokers activities
 - perform search for best policy, terms
 - negotiate terms and prices
 - assist with claims
 - provide risk management advice
 - may issue a policy or bind an insurance company
 - client pays the broker who then pays the insuring company.

Insurance, Warranties, Inspections

Basic Insurance
Concepts

**Standard Policy
Features**

Home Warranties

Inspection Basics

Standard Policy Features

Policy contents

- ❑ Policy details what is covered, to what extent, and exclusions

Policy types

- ❑ **Monoline** policy
 - contains only one type of coverage
 - examples: liability policy, homeowners policy
- ❑ **Package** policy
 - multiple types combined in one policy, eg, liability and homeowners

Insurance, Warranties, Inspections

Basic Insurance
Concepts

**Standard Policy
Features**

Home Warranties

Inspection Basics

Standard Policy Features

Coverage

- Dwelling coverage:** protects home and attached structures or fixtures
- Other structures coverage:** protects unattached structures such as fences and sheds
- Personal property coverage:** protects personal belongings and contents of home
- Loss of use coverage:** pays some expenses to live away from the home during repairs

Insurance, Warranties, Inspections

Basic Insurance
Concepts

**Standard Policy
Features**

Home Warranties

Inspection Basics

Standard Policy Features

Coverage

- Liability coverage:** protects homeowner when sued for injuries to others
- Medical payment coverage:** pays medical bills for someone injured on property
- Exclusions**
 - Perils such as earthquakes typically excluded, must be added with increased premium
 - Flood coverage is always excluded and require separate policy

Insurance, Warranties, Inspections

Basic Insurance
Concepts

**Standard Policy
Features**

Home Warranties

Inspection Basics

Standard Policy Features

The 80% rule

- ❑ Homeowner policies should insure the home for at least 80% of the home's replacement cost
- ❑ With “80%” the insurance will pay losses in full up to the face amount of the policy, minus the deductible
- ❑ Example: if the total coverage amount is \$300,000 and the deductible is \$500, a total loss of the home would pay \$299,500.

Insurance, Warranties, Inspections

Basic Insurance
Concepts

**Standard Policy
Features**

Home Warranties

Inspection Basics

Standard Policy Features

Homeowner's policies

- ❑ HO-2, HO-3, and HO-5 for modern homes
 - HO-2 has least coverage
 - HO-5 has most comprehensive coverage
 - all include structure and personal property

Insurance, Warranties, Inspections

Basic Insurance
Concepts

Standard Policy
Features

Home Warranties

Inspection Basics

Standard Policy Features

Homeowner's policies (cont.)

- ❑ **HO-6** for condominiums and cooperatives
 - covers semi-permanent structures such as cabinets and personal property
- ❑ **HO-8** for older homes with replacement costs higher than property market value
- ❑ **HO-4** for renters covers personal property and liability

Insurance, Warranties, Inspections

Basic Insurance
Concepts

Standard Policy
Features

Home Warranties

Inspection Basics

Home Warranties

- ❑ Major systems and appliance coverage
 - service
 - repairs
 - replacement

- ❑ Cost determined by
 - ❑ location, type, and size of property
 - ❑ amount of coverage included

- ❑ Lower prices generally signify more exclusions in policy

Insurance, Warranties, Inspections

Basic Insurance
Concepts

Standard Policy
Features

Home Warranties

Inspection Basics

Home Warranties

- ❑ Warranties frequent source of frustration -- parties do not understand of coverage limitations
- ❑ Several conditions may not be covered by warranties
 - preexisting conditions
 - improper installations
 - outdoor items
 - some appliances
 - pools
 - failures other than normal wear and tear

Insurance, Warranties, Inspections

Basic Insurance
Concepts

Standard Policy
Features

Home Warranties

Inspection Basics

Inspection Basics

- ❑ Inspections uncover need for major repairs or maintenance and builder oversights
- ❑ Typically inspect for
 - structural issues
 - plumbing and electrical problems
 - roof and foundation issues
 - termites
 - environmental hazards

Insurance, Warranties, Inspections

Basic Insurance
Concepts

Standard Policy
Features

Home Warranties

Inspection Basics

Inspection Basics

Termite inspections

- Termites exists in all states except Alaska
 - subterranean termite most common
- Damage caused before their presence is known
- Not easily discovered except through specific termite inspection

Insurance, Warranties, Inspections

Basic Insurance
Concepts

Standard Policy
Features

Home Warranties

Inspection Basics

Inspection Basics

Environmental hazard inspections

- Lead-based paint
- Air and water quality
- Soil contamination
- Mold and fungus
- Asbestos
- Methamphetamine production
- Urea formaldehyde and other toxic chemicals
- Faulty septic systems
- Radon
- Leaking underground storage tanks

Insurance, Warranties, Inspections

Basic Insurance
Concepts

Standard Policy
Features

Home Warranties

Inspection Basics

Inspection Basics

Environmental issues

- EPA-HUD booklet must be given to buyers and renters for lead-based paint hazards
- Brokers not expected to be experts on property conditions, environmental laws
- Brokers must disclose hazards to buyers and renters
- Advisable to have attorney draft disclosure notice

Key Takeaways



Unit 31 Other Indiana Laws Affecting Practice

Provided by the
Listing Leaders Academy



Other Indiana Laws Affecting Practice

Learning Objectives

- Seller's Property Condition Disclosure
- Psychologically Affected Properties
- Appraisal Licensing Requirements
- Distressed Property Sales
- Consumer Protection Act

Other IN Laws Affecting Practice

Seller's Residential Property Condition Disclosure

Psychologically Affected Properties

Appraisal Licensing Requirements

Distressed Property Sales

Wall Street Reform and Consumer Protection Act

Seller's Residential Property Condition Disclosure

When the Disclosure is required

- for residential properties with 1-4 units
- sale or exchange, installment sales contract, lease with option

When not required

- Transfer ordered by court
- When acquired through foreclosure sale
- By fiduciary administering decedent's estate
- From co-owner to co-owner
- To spouse or blood relative
- Due to nonpayment of taxes
- To or from government agency
- With first sale of never-occupied dwelling

Other IN Laws Affecting Practice

Seller's Residential Property Condition Disclosure

Psychologically Affected Properties

Appraisal Licensing Requirements

Distressed Property Sales

Wall Street Reform and Consumer Protection Act

Seller's Residential Property Condition Disclosure

Contents and form

- Must disclose to buyer any issues or defects that may impact decision to buy
- Must disclose hazard conditions, flood plain, structural issues, proximity to airport
- Must use Indiana disclosure form
- Must advise buyer to consider inspections in contract
- Must disclaim agent responsibility for seller's representations

Other IN Laws Affecting Practice

**Seller's Residential
Property Condition
Disclosure**

Psychologically
Affected Properties

Appraisal Licensing
Requirements

Distressed Property
Sales

Wall Street Reform and
Consumer Protection
Act

Seller's Residential Property Condition Disclosure

Disclosure procedure

- Owner to certify truth of information by signing completed form
- Disclosure not intended to supplant the need for an inspection
- Owner to note unknown information

Other IN Laws Affecting Practice

Seller's Residential Property Condition Disclosure

Psychologically Affected Properties

Appraisal Licensing Requirements

Distressed Property Sales

Wall Street Reform and Consumer Protection Act

Seller's Residential Property Condition Disclosure

Disclosure procedure (cont.)

- Seller must disclose before closing any material changes that occurred after form was originally signed by seller
- Owner to deliver disclosure form to buyer prior to accepting offer to purchase
- Buyer can back out of offer if disclosure provided after offer accepted
- Offer not enforceable until both seller and buyer sign disclosure form

Other IN Laws Affecting Practice

**Seller's Residential
Property Condition
Disclosure**

Psychologically
Affected Properties

Appraisal Licensing
Requirements

Distressed Property
Sales

Wall Street Reform and
Consumer Protection
Act

Seller's Residential Property Condition Disclosure

- ❑ Owner not liable for errors on form if
 - The error was not known by seller
 - The error was based on information provided by knowledgeable third party, and
 - The owner was passing the information on to the buyer

Other IN Laws Affecting Practice

Seller's Residential Property Condition Disclosure

Psychologically Affected Properties

Appraisal Licensing Requirements

Distressed Property Sales

Wall Street Reform and Consumer Protection Act

Psychologically Affected Properties

- ❑ A property for sale or lease where
 - occupant had or died from HIV-related disease
 - someone died on the property
 - a criminal felony was committed
 - criminal gang activity was present
 - there was a firearm discharge involving police
 - there was manufacture / distribution of a controlled substance

Other IN Laws Affecting Practice

Seller's Residential
Property Condition
Disclosure

**Psychologically
Affected Properties**

Appraisal Licensing
Requirements

Distressed Property
Sales

Wall Street Reform and
Consumer Protection
Act

Psychologically Affected Properties

- No “stigma” disclosure required unless asked directly
- No liability for refusal to disclose any such issue unless asked directly
- However, cannot misrepresent facts if asked directly

Other IN Laws Affecting Practice

Seller's Residential
Property Condition
Disclosure

Psychologically
Affected Properties

Appraisal Licensing
Requirements

Distressed Property
Sales

Wall Street Reform and
Consumer Protection
Act

Appraisal Licensing Requirements

Licensure and certification

- ❑ License issued by Indiana Real Estate Appraiser Certification Board
 - 7 members on board
 - 5 licensed appraisers with 5 years' experience
 - 1 lender representative able to make FHA and VA loans
 - 1 member not associated with real estate in any way
 - members serve for 4 years

Other IN Laws Affecting Practice

Seller's Residential
Property Condition
Disclosure

Psychologically
Affected Properties

**Appraisal Licensing
Requirements**

Distressed Property
Sales

Wall Street Reform and
Consumer Protection
Act

Appraisal Licensing Requirements

Licensure and certification

- ❑ Board submits recommendations to real estate commission regarding appraiser licensure, rules, fees, investigative fund

Appraisal license requirements

- ❑ Applicant must not have committed
 - acts that warrant discipline
 - crimes that impact competent practice
 - fraud or material deception
 - acts that endangered the public

Other IN Laws Affecting Practice

Seller's Residential
Property Condition
Disclosure

Psychologically
Affected Properties

**Appraisal Licensing
Requirements**

Distressed Property
Sales

Wall Street Reform and
Consumer Protection
Act

Appraisal Licensing Requirements

License requirements (cont.)

- ❑ Applicants must
 - submit fingerprints for background check
 - pay fees
 - pay all personal property taxes
 - pay child support
 - provide Social Security number
 - apply, pay, and pass examination
 - obtain license within 1 year of passing exam

Other IN Laws Affecting Practice

Seller's Residential
Property Condition
Disclosure

Psychologically
Affected Properties

**Appraisal Licensing
Requirements**

Distressed Property
Sales

Wall Street Reform and
Consumer Protection
Act

Appraisal Licensing Requirements

License requirements (cont.)

- ❑ **Licensed Appraiser Trainee**
 - 90 hours education completed within 5 years prior to application
 - pass examination

- ❑ **Certified Residential Appraiser**
 - 200 hours education
 - 1,000 hours of residential experience
 - 1,500 hours of non-residential experience completed in 30 or more months
 - pass exam
 - hold bachelor's degree

Other IN Laws Affecting Practice

Seller's Residential Property Condition Disclosure

Psychologically Affected Properties

Appraisal Licensing Requirements

Distressed Property Sales

Wall Street Reform and Consumer Protection Act

Appraisal Licensing Requirements

License requirements (cont.)

- ❑ **Certified General Appraiser**
 - 300 hours education
 - 1,500 hours of residential appraisal experience
 - 1,500 hours of non-residential appraisal experience completed in 30 or more months
 - pass exam
 - hold bachelor's degree

Other IN Laws Affecting Practice

Seller's Residential Property Condition Disclosure

Psychologically Affected Properties

Appraisal Licensing Requirements

Distressed Property Sales

Wall Street Reform and Consumer Protection Act

Appraisal Licensing Requirements

Introduction to USPAP

- ❑ Set of national standards for appraisers adopted in 1989 to protect public and to promote public trust
- ❑ All licensed and certified appraisers are required to comply with USPAP when appraising federally related transactions
- ❑ Contains rules and standards for appraisal development and reporting to clients

Other IN Laws Affecting Practice

Seller's Residential Property Condition Disclosure

Psychologically Affected Properties

Appraisal Licensing Requirements

Distressed Property Sales

Wall Street Reform and Consumer Protection Act

Appraisal Licensing Requirements

Introduction to USPAP (cont.)

- Requires appraiser to be independent, impartial, objective and to determine a credible opinion of value
- Recognized by Title 876 as though created by that law
- Statements on appraisal standards adopted by Title 876
- New editions or amendments must follow Indiana rulemaking provisions or cannot be in effect in Indiana

Other IN Laws Affecting Practice

Seller's Residential
Property Condition
Disclosure

Psychologically
Affected Properties

Appraisal Licensing
Requirements

**Distressed Property
Sales**

Wall Street Reform and
Consumer Protection
Act

Distressed Property Sales

- ❑ Distressed properties include
 - foreclosures
 - properties needing quick sale at reduced price
 - loan balance higher than property value (short sale)
 - poor physical condition
- ❑ Distressed properties sold as is

Other IN Laws Affecting Practice

Seller's Residential
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Psychologically
Affected Properties

Appraisal Licensing
Requirements

**Distressed Property
Sales**

Wall Street Reform and
Consumer Protection
Act

Distressed Property Sales

- ❑ Short sale
 - property sold by owner to avoid foreclosure
 - lender must agree to price if below loan balance
 - more complicated and takes longer than normal sale

Other IN Laws Affecting Practice

Seller's Residential Property Condition Disclosure

Psychologically Affected Properties

Appraisal Licensing Requirements

Distressed Property Sales

Wall Street Reform and Consumer Protection Act

Distressed Property Sales

- Foreclosure
 - lender takes ownership after borrower defaults
 - property is designated as R. E. Owned
 - lender attempts to auction property with no inspection allowed
 - If unsold at auction, property returns to bank for sale

- Distressed property may need to be purchased with all cash

Other IN Laws Affecting Practice

Seller's Residential Property Condition Disclosure

Psychologically Affected Properties

Appraisal Licensing Requirements

Distressed Property Sales

Wall Street Reform and Consumer Protection Act

Wall Street Reform and Consumer Protection Act

- ❑ Aka, “Dodd Frank” law, enacted in 2010
- ❑ **Purposes of the Act**
 - promote financial stability
 - end too “big to fail” growth of banks
 - protect taxpayers by ending bailouts
 - protect against abusive financial practices
- ❑ **Further consequences of the Act**
 - ❑ “streamlined” regulatory process
 - ❑ increased oversight of specific institutions
 - ❑ promoted transparency

Other IN Laws Affecting Practice

Seller's Residential
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Distressed Property
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**Wall Street Reform and
Consumer Protection
Act**

Wall Street Reform and Consumer Protection Act

- ❑ Act also created Consumer Financial Protection Bureau (CFPB)
- ❑ CFPB purposes
 - set and enforce rules for the financial marketplace
 - prevent predatory mortgage lending
 - improve clarity of mortgage paperwork
 - reduce mortgage broker incentives to push more expensive loans

Other IN Laws Affecting Practice

Seller's Residential
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Distressed Property
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**Wall Street Reform and
Consumer Protection
Act**

Wall Street Reform and Consumer Protection Act

- ❑ CFPB requires credit card companies to present loan terms in easy-to-read and understand formats
- ❑ **Volcker Rule** addition to Dodd-Frank
 - restricts how banks can invest
 - regulates trading in derivatives

Other IN Laws Affecting Practice

Seller's Residential Property Condition Disclosure

Psychologically Affected Properties

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Distressed Property Sales

Wall Street Reform and Consumer Protection Act

Wall Street Reform and Consumer Protection Act

Wall Street reforms

- holding Wall Street accountable for its own actions
- separating proprietary trading from business of banking
- creating Financial Stability Oversight Council to address systemic risks
- providing shareholders a voice on corporate affairs
- providing transparency and accountability rules for credit rating agencies

Other IN Laws Affecting Practice

Seller's Residential Property Condition Disclosure

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Distressed Property Sales

Wall Street Reform and Consumer Protection Act

Wall Street Reform and Consumer Protection Act

CFPB measures to protect families

- Combining mortgage disclosures to make costs and risks of loans clear
- Providing choice about joining expensive overdraft programs
- Prohibiting unfair credit card practices
- Making credit card rates and fees transparent
- Providing necessary information to students regarding financial aid

Key Takeaways

Unit 30 Office Administration & Supervision

Provided by the
Listing Leaders Academy

Office Administration & Supervision

Learning Objectives

- Office Procedures & Policy Manual
- Documents & Records
- Trust Accounts
- Place of Business Requirements
- Unlicensed Assistants
- Closing Procedures

Office Administration & Supervision

Office Procedures & Policy Manual

Documents and Records

Trust Accounts

Place of Business Requirements

Unlicensed Assistants

Closing Procedures

Office Procedures & Policy Manual

Purposes

- Set boundaries for employee operations
- Reflect company culture

Requirements

- Comply with Indiana laws
- Must obtain signed confirmation of receipt by each broker or employee

Office Administration & Supervision

Office Procedures & Policy Manual

Documents and Records

Trust Accounts

Place of Business Requirements

Unlicensed Assistants

Closing Procedures

Office Procedures & Policy Manual

Contents

- Ethical standards
- Managing broker responsibilities
- Level of supervision
- Rules enforcement
- Transfer request procedures
- Broker terminations procedures
- Broker and staff general responsibilities
- Personnel policies

Office Administration & Supervision

Office Procedures & Policy Manual

Documents and Records

Trust Accounts

Place of Business Requirements

Unlicensed Assistants

Closing Procedures

Office Procedures & Policy Manual

Contents (cont.)

- Workplace privacy policies
- Technology policies
- Nondiscriminatory practices
- Sexual harassment
- Fair housing
- RESPA
- Do not call rules
- Equal opportunity

Office Administration & Supervision

Office Procedures & Policy Manual

Documents and
Records

Trust Accounts

Place of Business
Requirements

Unlicensed Assistants

Closing Procedures

Office Procedures & Policy Manual

Contents (cont.)

- Advertising policies and rules
- Listing and open house policies
- Contracts and forms
- Cooperating brokers
- Prospecting for clients
- Commission and referral fees
- Offers and closing procedures
- Escrow money procedures

Office Administration & Supervision

Office Procedures &
Policy Manual

**Documents and
Records**

Trust Accounts

Place of Business
Requirements

Unlicensed Assistants

Closing Procedures

Documents and Records

Records broker must retain

- Expense records
- Records related to working with out-of-state commercial brokers
- Records related to all real estate transactions

Abandoned records

- Attorney general determines if records are abandoned and notifies owners
- Records not reclaimed in 3 years may be destroyed

Office Administration & Supervision

Office Procedures &
Policy Manual

Documents and
Records

Trust Accounts

Place of Business
Requirements

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Closing Procedures

Trust Accounts

Requirements

- Managing broker must maintain trust account for funds belonging to others
- Account must be at federally insured financial institution and identified as trust account
- Account can be interest bearing; interest held for beneficiary of funds
- Account cannot be used for broker's personal or business funds

Office Administration & Supervision

Office Procedures & Policy Manual

Documents and Records

Trust Accounts

Place of Business Requirements

Unlicensed Assistants

Closing Procedures

Trust Accounts

Requirements (cont.)

- Managing broker must keep records of funds, interest, and disbursements
- Commission takes custody of account upon managing broker's termination or death
- Closing agent may maintain trust account for transaction-related funds
- Licensees must turn funds over to managing broker for deposit into account

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Trust Accounts

House Enrolled Act 1374 (Good Funds Act)

- Assures that secured funds are good and immediately available for disbursement
- Requires all transaction-related funds be deposited into trust account unless other arrangements are made
- Improper handling of account leads to license revocation or suspension, financial damages, and/or incarceration
- Brokerage to provide detailed summary of accounts to Commission upon request

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**Place of Business
Requirements**

Unlicensed Assistants

Closing Procedures

Place of Business Requirements

- Brokerage company must be managed by managing broker
 - must be managing broker's sole place of business
- Managing broker can manage multiple companies located at same address
- Managing broker responsible to Commission for company's actions

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**Place of Business
Requirements**

Unlicensed Assistants

Closing Procedures

Place of Business Requirements

Evidence of Licensure

- Evidence of current licensure for each broker to be maintained by real estate office
- Licenses must be displayed at offices where brokers work
- Proof of current licensure provided to Commission upon request

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Closing Procedures

Place of Business Requirements

Branch Offices

- Defined as office locations in addition to principal place of business
- Each branch office must be managed by branch manager
- Branch managers may manage more than one branch
- Managing broker may be branch manager

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**Place of Business
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Unlicensed Assistants

Closing Procedures

Place of Business Requirements

Branch Offices (cont.)

- Branch offices to be registered with commission prior to opening
- Commission must be notified of new branch manager and transfers of brokers from one branch to another
- Commission to be provided list of brokers at each branch office
- Licenses must be displayed at branch office where broker conducts business

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Unlicensed Assistants

Closing Procedures

Unlicensed Assistants

- ❑ Provide administrative & clerical support
- ❑ Broker who allows violations of license law by unlicensed assistants can be disciplined
- ❑ **Permitted activities**
 - answer phones
 - provide property data and list price
 - provide listings to MLS
 - obtain and assemble documents
 - transcribe forms for broker approval

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Unlicensed Assistants

- ❑ Permitted activities (cont.)
 - deliver documents
 - place broker-approved ads with media
 - place signs on properties
 - schedule property showings
 - assist with open houses
 - calculate commission checks
 - monitor personnel files and licenses
 - record deposits and rents
 - order repairs for property as directed by broker

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Closing Procedures

Unlicensed Assistants

❑ Prohibited activities

- place ads without broker approval
- show properties
- conduct open houses
- provide information other than price, address, and directions
- discuss contracts with client, customer, or unaffiliated broker
- canvass for listings
- negotiate fees
- pretend to be licensed

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Closing Procedures

Requirements

- Closing statement must be created before closing to show advance financial details of transaction
- Statement must be kept for at least 5 years
- Listing and selling agent required to attend closing unless property is commercial or institutional or client will not attend
- Attorneys, lender representative, and title company representative may also attend

Closing Procedures

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Closing Procedures

Requirements (cont.)

- Face-to-face closing is where all parties are present at closing
- Escrow closing is when a third party conducts closing without buyer or seller present
- Broker and lender responsibilities typically completed prior to closing
- Seller and buyer must fulfill terms of sales contract and pay any fees

Closing Procedures

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Closing Procedures

Inspections

- Conducted during escrow period after offer is accepted, trust monies deposited
- Offer may include condition for
 - property inspection
 - pest inspection
 - hazard inspection, etc.
- Condition may allow buyer to back out of offer if significant problems discovered

Closing Procedures

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Closing Procedures

Inspections

- Buyer and seller may agree for seller to make necessary repairs
- Property inspectors required to be licensed in Indiana
- General inspection takes 2-3 hours and should have buyer present

Closing Procedures

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Closing Procedures

Inspections

- Conducted during contingency period
- Buyer could back out of contract if major problems are found
- Inspection report should include
 - identification of problems as safety issue, major defect, or minor defect
 - items that need replacing, repairing, or watching over
 - areas needing routine maintenance

Closing Procedures

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Closing Procedures

Surveys

- Show property lines and prevent overlaps of land ownership
- All legal land documents in Indiana are tied into the original survey which marks each square mile of the state
- County surveyor required to maintain corner record book and locate 5% of the corners each year
- Pre-construction surveys establish where buildings, roads, fences, underground utilities should be located
- Utility companies can use pre-construction surveys to locate wiring for repairs

Closing Procedures

Key Takeaways

Unit 29 Indiana Brokerage Practice Regulation

Provided by the
Listing Leaders Academy

Indiana Brokerage Practice Regulation

Learning Objectives

- The Managing Broker
- Managing Broker Relationships
- Listing Agreements & Offers to Purchase
- Professional Standards of Conduct
- Fee Appraisals and BPOs

IN Brokerage Practice Regulation

The Managing Broker

Managing Broker-Broker
Relationships

Listing Agreements and
Offers to Purchase

Professional Standards
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Fee Appraisals by
Brokers, BPOs

The Managing Broker

Qualifications

- 2 years valid broker license
- 24 hours broker management education
- Indiana resident, with exceptions
- 12 hours continuing education per year
 - including 4 hours management

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The Managing Broker

Responsibilities

- supervise all affiliated licensees
- notify Commission of names of managing brokers for each office
- if a business entity, designate a licensed broker
- affiliated broker change notifications
- maintain escrow accounts
- establish and enforce office policy for agency relationships

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The Managing Broker

Death or termination of managing broker

- Transactions in progress and escrow accounts prior to termination may be continued by a broker in the firm for 90 days
- No new business may be acquired until this broker is associated with new managing broker
- All associated brokers become managing brokers until associated with another managing broker

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The Managing Broker

License Status Management

- Each company must have a managing broker
- If firm has more than one office, each office must be managed by a branch manager
- Branch manager may manage more than one branch within same firm
- Supervisory branch manager must sign, approve, process license status changes of all brokers at the branch

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Managing Broker-Broker Relationships

Control and responsibilities

- Licensees can only perform transactions on behalf of managing broker
- Only contract with or accept compensation from managing broker
- Licensees are either employees or independent contractors for managing broker

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Managing Broker-Broker Relationships

Independent contractors (ICs) v employees

- ❑ Managing broker has no control over how ICs perform work
- ❑ Can supervise and control employees
- ❑ Contractors pay own taxes; receive no benefits
- ❑ IRS safe harbor test determines if broker is contractor or employee
 - based on how compensation is determined and if written contract exists

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Broker's responsibilities to managing broker

- Comply with license laws
- Follow written policies
- Promote company's listings
- Fulfill duties to clients
- Maintain licensing
- Handle funds properly
- Follow laws for documents and advertising
- Maintain records
- Affiliate with only one company at a time
- Perform ethically
- Turn over all listings at termination

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Managing broker's responsibilities to broker

- Follow license laws
- Enforce written policies
- Approve, manage listings
- Review broker-related agreements
- Ensure proper licensure
- Manage employment contracts
- Provide training
- Enforce document delivery procedures

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Employment Agreements

- Required for employees and ICs
- Must be signed by both parties
- Must cover relationship status and terms
 - supervision, compensation, duties, duration, how to terminate or renew
- Should be developed by attorney
- Copy must be given to employee or contractor

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Compensation

- Employees paid salary or commission percent
- Independent contractors paid by commission
- Indiana allows commission splitting with another broker
- Commissions usually divided among managing broker, listing broker, and selling broker

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Referral compensation

- Referrals are recommendations or sales leads provided to a broker
- Can come from existing tenants referring new tenants or from one broker to another for properties for sale
- The referring party is compensated for the referral

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Listing Agreements and Offers to Purchase

Listing agreements

- Must be in writing on pre-approved forms
- Must include
 - identification of property
 - duration and expiration date
 - compensation terms
 - property owner and brokerage names
 - listing price
 - property items to be included
 - broker duties
 - seller obligations
 - signatures of seller and broker

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Listing Agreements and Offers to Purchase

Offers to purchase

- ❑ Offer must include
 - names of involved parties
 - property location and description
 - offering price and deposits or earnest monies
 - commission rate for brokerage
 - conditions to the offer
 - items to be included
 - home warranty if applicable

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Listing Agreements and Offers to Purchase

Offers to purchase

- offer becomes legally binding when seller accepts and notifies buyer
- lack of acceptance may result in counteroffer or rejection of offer
- after acceptance, escrow funds deposited within 2 banking days
 - broker held responsible for any money received

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Offers to purchase

- ❑ Escrow disbursal
 - if no closing, broker disburses to the seller or buyer, only if both agree, or per a court order
 - alternatively, broker releases funds as determined by contract terms, or broker notifies parties how funds will be released
 - funds must be released within 60 days of mailing date of notice

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Professional Standards of Conduct

Unfair Inducements

- ❑ Inducement: act or reward that helps bring about an action or desired result
 - can be positive or negative
- ❑ Unfair inducements: incentives related to fraud or material deception, e.g.:
 - influencing or coercing an appraiser
 - accepting an incentive for obtaining a listing without disclosure
 - allowing the broker's name to be used inappropriately

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Professional Standards of Conduct

Guidelines for competent practice

- Account for trust funds
- No accepting undisclosed inducements
- No undisclosed direct profits on expenditures
- No acting as broker and undisclosed client in same transaction
- No guaranteeing future profits from resale of property

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Professional Standards of Conduct

Guidelines for competent practice (cont.)

- No listing of property without owner authority
- No inducing party to breach a listing in order to obtain the same property listing
- No accepting compensation for issuing appraisal report at predetermined value
- No appraisal report on broker's property without disclosure
- No negotiating agreement with party who is client of another broker

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Guidelines for competent practice (cont.)

- No representing multiple Indiana broker companies
- No compensating unlicensed individuals for acts that require license
- No committing fraud
- No violating Indiana laws

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Required disclosures

- Agency relationship
- Limited agency
- Managing broker policy
- Non-agency
- Designated agent for in-house agency
- Managing broker's compensation
- Property adverse material facts
- Broker's interest in property
- Inducement for listing or selling
- Property condition

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Prohibited disclosures

- if party will accept less or pay more
- client's motivations, financial status
- Other material or confidential facts about client
- confidential information received from client

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Professional Standards of Conduct

Handling Referrals

- Broker can opt to place license on **referral status**
 - License is active, but broker cannot practice real estate
 - Broker may provide referrals for a fee
- Referral service companies must sign written agreement with client and disclose amount of referral fee to co-op broker
- Brokers or companies licensed outside Indiana can refer business to Indiana brokers

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Requirements

- Advertising that includes broker's name must include name of brokerage
- Name of brokerage must be clearly visible and larger than broker's name
- Failure to show names constitutes illegal blind ad
- Advertising must be supervised by and under name of broker company

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Advertising

Requirements

- Managing broker responsible for content
- Broker company name must appear as it does on the company's license or as publicly known
- Electronic advertising can show link to another display that includes company's name
- Broker selling own property must disclose the name of the broker company under which the property is being sold

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Prohibitions

- No advertising for private party selling property when not engaged in real estate business
- No advertising using only post office box, phone number, or street address
- No putting sign on any property or advertising a property without written consent of property owner
- No advertising in false or misleading manner

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Internet advertising

- National Association of REALTORS® rules cover Internet advertising
- Licensed entities must monitor Internet advertising content at least once a month for accuracy

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Internet advertising

- ❑ Ads must include
 - city where property is located
 - brokerage name
 - regulatory jurisdiction of brokerage if different from where property is located
 - brokerage home page or link to a site that has brokerage name, location, and regulatory jurisdiction where brokerage holds a license
 - identifying information must be on first or last page of all communications

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Privacy protections

☐ Privacy Act of 1974

- established controls over what personal information is collected by federal government
- regulates how that information can be used
- protects public against disclosure of personal information without permission
- protects consumers against receiving unwanted solicitations via emails or calls

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Privacy protections

- ❑ Agency requirements under **Privacy Act**
 - obtain written consent to disclose personal information
 - protect confidentiality of personal information collected
 - keep only information necessary for purpose of the agency
 - disclose purpose for obtaining and using personal information
 - change or remove incorrect information

IN Brokerage Practice Regulation

The Managing Broker

Managing Broker-Broker
Relationships

Listing Agreements and
Offers to Purchase

Professional Standards
of Conduct

Advertising

Fee Appraisals by
Brokers, BPOs

Advertising

CAN SPAM Act

- Sets standards for sending commercial email
- Requires FTC to enforce the act
- Prohibits businesses from sending unwanted emails and texts to wireless devices

IN Brokerage Practice Regulation

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Fee Appraisals by
Brokers, BPOs

Advertising

CAN SPAM Act

- ❑ Commercial emails must
 - identify sender, advertiser, and physical postal address where receiver can write
 - give free non-expiring opt-out choice with sender required to comply within 10 days
 - no deceptive or misleading subject lines allowed
 - must have subject line warning of sexually explicit content if applicable

IN Brokerage Practice Regulation

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Fee Appraisals by
Brokers, BPOs

Advertising

Do Not Call Registry / Telephone Consumer Protection Act (TCPA)

- Restricts telemarketing calls and use of automatic telephone dialing systems and voice messages
- Regulates text messages and fax machines
- Covers interstate and intrastate telemarketing calls

IN Brokerage Practice Regulation

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Advertising

TCPA restrictions

- No calling residents before 8 a.m. Or after 9 p.m.
- Company-specific do-not-call lists must be honored for 5 years
- National do-not-call registry must be honored forever
- Must identify name of person for whom call is being made along with phone number or address where person or entity can be contacted

IN Brokerage Practice Regulation

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Advertising

Fee Appraisals by
Brokers, BPOs

Advertising

TCPA restrictions (cont.)

- Must not use artificial voice or recording when calling residences
- Must not call emergency or healthcare lines or services that charge the recipient for the call
- No unsolicited advertising faxes
- Must have written consent from consumers prior to robocalling

IN Brokerage Practice Regulation

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Advertising

Fee Appraisals by
Brokers, BPOs

Advertising

TCPA restrictions (cont.)

- Must not use established business relationship to avoid getting consent for calling home phones
- Must provide opt-out mechanism during each robocall
- Tax exempt telemarketers responding to a consumer's request are exempt from do-not-call rules
- Claims for violations can be brought in state court for monetary losses or damages

IN Brokerage Practice Regulation

The Managing Broker

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of Conduct

Advertising

Fee Appraisals by
Brokers, BPOs

Fee Appraisals by Brokers, BPOs

- ❑ Appraisals may include
 - automated valuation model
 - a broker's price opinion
 - a desktop evaluation

- ❑ Appraisers for federally regulated institutions must be licensed as an appraiser

- ❑ Licensed brokers can appraise for non-federally related transactions in Indiana
 - brokers can perform BPOs and CMAs

IN Brokerage Practice Regulation

The Managing Broker

Managing Broker-Broker
Relationships

Listing Agreements and
Offers to Purchase

Professional Standards
of Conduct

Advertising

Fee Appraisals by
Brokers, BPOs

Fee Appraisals by Brokers, BPOs

- ❑ Indiana brokers who appraise must comply with USPAP
 - USPAP includes standards for appraisals but does not include specific appraisal methods to be used

- ❑ BPOs identify
 - probable selling price
 - property condition
 - market conditions
 - neighborhood characteristics
 - comparables

IN Brokerage Practice Regulation

The Managing Broker

Managing Broker-Broker
Relationships

Listing Agreements and
Offers to Purchase

Professional Standards
of Conduct

Advertising

Fee Appraisals by
Brokers, BPOs

Fee Appraisals by Brokers, BPOs

Drive-by BPO

- tentative valuation as no interior evaluation is performed

Internal BPO

- involves verifying square footage and room count
- reporting condition of property
- establishing repair estimates
- taking photos

Key Takeaways



Unit 28 Indiana Agency Relationships

Provided by the
Listing Leaders Academy



Indiana Agency Relationships

Learning Objectives

- Nature of Agency Relationships
- Permissible Relationships
- Duties
- Termination of Agency Relationships
- Listing Agreements

Indiana Agency Relationships

**Nature of the Agency
Relationship**

**Permissible
Relationships**

Duties

Disclosures

**Termination of Agency
Relationship**

Listing Agreements

Nature of the Agency Relationship

Definitions

- A relationship where licensee represents a client in a real estate transaction
- Formed when the client hires a broker to represent the client in a transaction
- Relationship carries fiduciary duties based on trust and loyalty
- Formalized by signing a contract ratifying duties, obligations, and timeframes

Indiana Agency Relationships

Nature of the Agency
Relationship

Permissible
Relationships

Duties

Disclosures

Termination of Agency
Relationship

Listing Agreements

Nature of the Agency Relationship

Forms of representation

- Broker represents seller where the agent is accountable only to the seller
- Broker represents buyer where the agent is accountable only to the buyer
- Broker represents landlord where the agent is accountable only to the landlord
- Broker represents tenant where the broker is accountable only to the tenant

Indiana Agency Relationships

Nature of the Agency Relationship

Permissible Relationships

Duties

Disclosures

Termination of Agency Relationship

Listing Agreements

Nature of the Agency Relationship

Regulation

- Agency regulated by statutory, common, and contract laws

Agency establishment

- Relationship must be established at managing broker level

Compensation

- Does not create or determine agency relationship
- Not required for agency

Indiana Agency Relationships

Nature of the Agency
Relationship

**Permissible
Relationships**

Duties

Disclosures

Termination of Agency
Relationship

Listing Agreements

Permissible Relationships

Single agency

- Only one client

In-house agency

- Two clients represented by two different agents within same brokerage

Limited agency

- Written consent of all parties for broker to represent both seller and buyer
 - also called dual agency
 - fiduciary duties are limited

Indiana Agency Relationships

Nature of the Agency
Relationship

**Permissible
Relationships**

Duties

Disclosures

Termination of Agency
Relationship

Listing Agreements

Permissible Relationships

Subagency

- One broker acting for another broker
 - prohibited in Indiana

No agency

- Broker facilitating transaction and representing neither party
- No fiduciary duties
- Customers are owed honesty, fair dealing and reasonable care

Indiana Agency Relationships

Nature of the Agency
Relationship

Permissible
Relationships

Duties

Disclosures

Termination of Agency
Relationship

Listing Agreements

Duties

Fiduciary and common law

- Agency duties set forth in code
- Common law principles may also apply
- If common law conflicts with code, the code supersedes

Indiana Agency Relationships

Nature of the Agency
Relationship

Permissible
Relationships

Duties

Disclosures

Termination of Agency
Relationship

Listing Agreements

Duties

Duties in 'no agency' customer relationships

- Receive and present offers
- Assist in negotiating and completing forms
- Respond to questions about offers and contingencies
- Treat customer honestly

Indiana Agency Relationships

Nature of the Agency
Relationship

Permissible
Relationships

Duties

Disclosures

Termination of Agency
Relationship

Listing Agreements

Duties

Duties in 'no agency' relationships (cont.)

- Must disclose adverse material facts
- May not disclose
 - client will accept lower price
 - why the client is selling
 - other confidential information about client
- No duty to inspect property or verify accuracy of client's statements

Indiana Agency Relationships

Nature of the Agency
Relationship

Permissible
Relationships

Duties

Disclosures

Termination of Agency
Relationship

Listing Agreements

Duties

Duties in seller/landlord/buyer/tenant relationships

- Fulfill agency agreement
- Disclose nature of relationship
- Promote interests of client
- Present purchase/lease offers
- Disclose adverse material facts

Indiana Agency Relationships

Nature of the Agency
Relationship

Permissible
Relationships

Duties

Disclosures

Termination of Agency
Relationship

Listing Agreements

Duties

Duties in seller/landlord/buyer/tenant relationships (cont.)

- Advise client to seek expert advice
- Account for moneys received
- Exercise reasonable care and skill
- Do not disclose client confidential price or financing information

Indiana Agency Relationships

Nature of the Agency
Relationship

Permissible
Relationships

Duties

Disclosures

Termination of Agency
Relationship

Listing Agreements

Duties

Duties in limited agency relationships (dual agency)

- Obtain written consent of all parties
- Include required statements in written consent
- No disclosure of client's willingness to pay more or accept less
- No disclosure of clients' motivation
- Must remain impartial to all parties
- Inform parties of facts that could impact decisions

Indiana Agency Relationships

Nature of the Agency
Relationship

Permissible
Relationships

Duties

Disclosures

Termination of Agency
Relationship

Listing Agreements

Duties

Duties for 'In-house' agency relationships

- Same duties as single agency
- No disclosure of confidential information about client
- May disclose to managing broker for advice if needed for client's benefit
- Managing broker must protect confidential information

Indiana Agency Relationships

Nature of the Agency
Relationship

Permissible
Relationships

Duties

Disclosures

Termination of Agency
Relationship

Listing Agreements

Disclosures

Purposes of disclosure

- Clarify who the broker represents
- Outline duties and standards of care
- Present relationship choices
- Broker must inform client of all information affecting client's interests

Indiana Agency Relationships

Nature of the Agency
Relationship

Permissible
Relationships

Duties

Disclosures

Termination of Agency
Relationship

Listing Agreements

Disclosures

Managing broker requirements

- Must enforce policy for allowed agency relationships
- Policy must allow or reject limited agency
- Must disclose policy prior to exchange of confidential information
- Must disclose existing agency relationships at first substantive contact & before offer

Indiana Agency Relationships

Nature of the Agency
Relationship

Permissible
Relationships

Duties

Disclosures

Termination of Agency
Relationship

Listing Agreements

Disclosures

Substantive contact

- Showing customer property to purchase
- Gathering confidential information from customer
- Executing contract to sell

Indiana Agency Relationships

Nature of the Agency
Relationship

Permissible
Relationships

Duties

Disclosures

Termination of Agency
Relationship

Listing Agreements

Disclosures

Substantive contact – what it is not

- Open house; no confidential info exchanged
- Engaging in ‘small talk’
- Answering questions about advertisements or the brokerage
- Whenever broker knows party is represented by another broker

Indiana Agency Relationships

Nature of the Agency
Relationship

Permissible
Relationships

Duties

Disclosures

Termination of Agency
Relationship

Listing Agreements

Disclosures

Limited agency disclosure

- Must be disclosed and agreed to by all parties

No agency disclosure

- Must disclose in writing to all parties during first substantive contact

In-house agency disclosure

- Must disclose in-house agency
- Must disclose name of designated agent

Indiana Agency Relationships

Nature of the Agency
Relationship

Permissible
Relationships

Duties

Disclosures

Termination of Agency
Relationship

Listing Agreements

Disclosures

Shared compensation

- Must disclose any compensation to be shared with others whose interests may be different

Interest in a listed property

- Broker must disclose any intention to acquire any property the broker has listed
- Broker must disclose to all parties any ownership in property prior to buying or selling or receiving compensation

Indiana Agency Relationships

Nature of the Agency
Relationship

Permissible
Relationships

Duties

Disclosures

Termination of Agency
Relationship

Listing Agreements

Termination of Agency Relationship

- ❑ After termination of agency
 - broker must account for all moneys received
 - must keep all information confidential unless required by law to disclose

Voluntary termination

- ❑ Relationship voluntarily terminates
 - when transaction is complete
 - upon expiration
 - Whenever both parties agree

Indiana Agency Relationships

Nature of the Agency
Relationship

Permissible
Relationships

Duties

Disclosures

**Termination of Agency
Relationship**

Listing Agreements

Termination of Agency Relationship

Involuntary termination

- Either party dies or becomes incapacitated
- Agent abandons listing
- Property is condemned or destroyed
- Listing agreement is breached
- Either party becomes bankrupt
- Broker's license is revoked

Indiana Agency Relationships

Nature of the Agency
Relationship

Permissible
Relationships

Duties

Disclosures

Termination of Agency
Relationship

Listing Agreements

Seller agreements

- Legally binding contract that creates agency relationship
- Must be in writing or in electronic format
- Must include expiration date

Open listings

- Owner may list with multiple brokers
- Owner retains right to sell property himself and pay no commission

Listing Agreements

Indiana Agency Relationships

Nature of the Agency
Relationship

Permissible
Relationships

Duties

Disclosures

Termination of Agency
Relationship

Listing Agreements

Seller agreements (cont.)

Exclusive agency

- Owner lists with only one broker
- Only pays broker commission if that broker sells property
- Owner retains rights to sell property and pay no commission

Exclusive right to sell

- Listing broker has exclusive right to sell the property
- Broker paid commission regardless of who sells the property

Listing Agreements

Indiana Agency Relationships

Nature of the Agency
Relationship

Permissible
Relationships

Duties

Disclosures

Termination of Agency
Relationship

Listing Agreements

Buyer agreements

- Types: exclusive, exclusive agency, open
- Buyer agency agreement contents
 - list price
 - expiration date
 - commission rates
 - included property items
 - broker duties
 - seller obligations
 - exceptions

Listing Agreements

Indiana Agency Relationships

Nature of the Agency
Relationship

Permissible
Relationships

Duties

Disclosures

Termination of Agency
Relationship

Listing Agreements

Buyer agreements (cont.)

- Net listings: illegal in Indiana unless accompanied by a listing provision stating a maximum commission to be paid by the seller.

Listing Agreements

Key Takeaways

Unit 27 Maintaining an Indiana Real Estate Licence

Provided by the
Listing Leaders Academy

Maintaining An Indiana Real Estate License

Learning Objectives

- Post-License Education Requirements
- Renewal Procedures
- Transfers, Assigned, & Unassigned
- Active & Inactive Status
- Continuing Education Requirements

Maintaining an Indiana Real Estate License

Post-License Education Requirements

Renewal Procedures

Transfers, Assigned and Unassigned

Active and Inactive License Status

Continuing Education Requirements

Post-License Education Requirements

- 30 hours during first 2 years following initial licensing
- Failure to complete – licensee not allowed to renew
- Postlicense requirement substitutes for CE during the initial 2-year period
- The fractional year of initial licensing is not included in calculating the 2-year period

Maintaining an Indiana Real Estate License

Post-License Education
Requirements

Renewal Procedures

Transfers, Assigned and
Unassigned

Active and Inactive
License Status

Continuing Education
Requirements

Renewal Procedures

- ❑ Submit application, pay renewal fee prior to expiration

- ❑ If fail to renew **within** 3 years of expiration
 - submit application
 - pay renewal and reinstatement fee
 - complete continuing education
 - provide sworn statement of completion of requirements

Maintaining an Indiana Real Estate License

Post-License Education
Requirements

Renewal Procedures

Transfers, Assigned and
Unassigned

Active and Inactive
License Status

Continuing Education
Requirements

Renewal Procedures

- ❑ If fail to renew **after** 3 years of expiration
 - submit application
 - pay renewal and reinstatement fee
 - complete 36 hours CE within 3 years prior to applying for reinstatement
 - provide sworn statement of completion of requirements

Maintaining an Indiana Real Estate License

Post-License Education
Requirements

Renewal Procedures

Transfers, Assigned and
Unassigned

Active and Inactive
License Status

Continuing Education
Requirements

Renewal Procedures

- ❑ Military duty extensions of renewal
 - 180-day renewal extension granted for 30 or more days of out-of-state active military duty during which license expires
 - extended to 365 days for injury, illness, or disability related to active duty

Maintaining an Indiana Real Estate License

Post-License Education
Requirements

Renewal Procedures

Transfers, Assigned and
Unassigned

Active and Inactive
License Status

Continuing Education
Requirements

Renewal Procedures

- ❑ Delayed renewals
 - Licensing agency may delay renewal for 90 days if investigating violation warranting possible disciplinary action
 - Licensing agency must then deny or renew license with conditions
 - Licensing agency can request that the Attorney General's office investigate

Maintaining an Indiana Real Estate License

Post-License Education
Requirements

Renewal Procedures

**Transfers, Assigned and
Unassigned**

Active and Inactive
License Status

Continuing Education
Requirements

Transfers, Assigned and Unassigned

- Newly licensed broker may opt to be assigned to a brokerage company

Termination from assigned broker company

- If broker terminates relationship, must submit reassignment application to Commission
- Must include request for reassignment or unassigned status within 5 days of termination
- Cannot practice real estate prior to reassignment except as sole proprietor

Maintaining an Indiana Real Estate License

Post-License Education
Requirements

Renewal Procedures

**Transfers, Assigned and
Unassigned**

Active and Inactive
License Status

Continuing Education
Requirements

Transfers, Assigned and Unassigned

Reassignment to another broker company

- Must have any unassigned status changed to assigned
- Must have new broker sign reassignment application attesting to the new assignment
- Must complete required application steps; may be done online

Maintaining an Indiana Real Estate License

Post-License Education
Requirements

Renewal Procedures

Transfers, Assigned and
Unassigned

**Active and Inactive
License Status**

Continuing Education
Requirements

Active and Inactive License Status

- ❑ License is active when assigned to broker company
- ❑ When license is inactive
 - Broker cannot perform licensed activity
 - Continuing education not required
 - Must pay applicable fees
 - Must comply with license renewal requirements
 - Must complete post-license or CE prior to reactivation

Maintaining an Indiana Real Estate License

Post-License Education
Requirements

Renewal Procedures

Transfers, Assigned and
Unassigned

Active and Inactive
License Status

Continuing Education
Requirements

Continuing Education Requirements

- Required each year as condition for license renewal
- CE year is from July 1 to June 30 of following year

Broker CE requirements

- 12 classroom hours per year
- Provide statement of completion at license renewal
- Retain completion certificates for 3 years

Maintaining an Indiana Real Estate License

Post-License Education
Requirements

Renewal Procedures

Transfers, Assigned and
Unassigned

Active and Inactive
License Status

**Continuing Education
Requirements**

Continuing Education Requirements

Managing brokers

- ❑ 12 hours per year; 4 hours on business, management and law
- ❑ Extensions for completion granted same as for renewals

Maintaining an Indiana Real Estate License

Post-License Education
Requirements

Renewal Procedures

Transfers, Assigned and
Unassigned

Active and Inactive
License Status

**Continuing Education
Requirements**

Continuing Education Requirements

General CE requirements

- Incomplete or unapproved coursework results in noncompliance and nonrenewal of license
- Broker may appeal and request review within 21 days
- Broker may reinstate by
 - paying civil penalty
 - completing coursework within 6 months
 - receives conditional license until all requirements met

Maintaining an Indiana Real Estate License

Post-License Education
Requirements

Renewal Procedures

Transfers, Assigned and
Unassigned

Active and Inactive
License Status

**Continuing Education
Requirements**

Continuing Education Requirements

General CE requirements (cont.)

- Failure to comply with reinstatement requirements results in suspension or no reinstatement of license
- Providing false or misleading CE information results in discipline and sanctions to include \$5,000 civil penalty
- Compliance results in reinstatement or renewal of license and removal of conditional license

Maintaining an Indiana Real Estate License

Post-License Education
Requirements

Renewal Procedures

Transfers, Assigned and
Unassigned

Active and Inactive
License Status

Continuing Education
Requirements

Continuing Education Requirements

CE requirement exemptions

- ❑ May get CE waiver for
 - military service
 - incapacitating illness
 - other hardship recognized by commission
 - certifying that broker will not practice
 - certifying that broker will only be making referrals until requirements met

Key Takeaways

Unit 26 Acquiring an Indiana License

Provided by the
Listing Leaders Academy

Acquiring an Indiana License

Learning Objectives

- Activities Requiring a License
- License Requirements
- Special License Types
- Application Procedures

Acquiring an Indiana Real Estate License

Activities Requiring Licensure

License Requirements

Special License Types

Application Procedures

Activities Requiring Licensure

- ❑ Must be licensed to engage in the practice of real estate for compensation
- ❑ Licensed activities
 - selling, buying, leasing or managing
 - listing, advertising and showing property
 - discussing negotiating contracts or commissions / fees
 - offering or negotiating to perform any of these activities
 - negotiating commissions, splits, fees

Acquiring an Indiana Real Estate License

Activities Requiring Licensure

License Requirements

Special License Types

Application Procedures

Activities Requiring Licensure

Exemptions and waivers

- attorneys and public officials
- individuals following court orders or wills
- hotel 30-day or less rentals
- employees of licensee renting apartments fewer than 12 rental units
- nonresident broker referrals
- property owner or owner's employee
- auctioneer
- dealer in cemetery lots
- permission of commission
- nonresident licensed commercial broker

Acquiring an Indiana Real Estate License

Activities Requiring
Licensure

License Requirements

Special License Types

Application Procedures

License Requirements

License types

- Broker and managing broker

Education requirements

- Broker
 - Must complete 90-hour broker course
- Managing broker
 - must complete additional 24-hour course covering brokerage business, brokerage operations, and managing broker's role

Acquiring an Indiana Real Estate License

Activities Requiring
Licensure

License Requirements

Special License Types

Application Procedures

License Requirements

General application requirements

- 18 years old
- No prohibited acts convictions
- High school diploma or equivalent
- Complete broker course
- Submit application and fee
- Pass exam

Acquiring an Indiana Real Estate License

Activities Requiring
Licensure

License Requirements

Special License Types

Application Procedures

License Requirements

License term and expiration

- ☐ License term is 3 years
 - expires on date set by professional licensing agency
 - licensee gets 60-day expiration notice
 - licensee has 45 days to renew from date notice received

Acquiring an Indiana Real Estate License

Activities Requiring
Licensure

License Requirements

Special License Types

Application Procedures

License Requirements

License term and expiration

If license expires

- commission sends expiration notice within 30 days following expiration
- notice includes instructions for reinstatement
- notice sent electronically or via US mail

Acquiring an Indiana Real Estate License

Activities Requiring
Licensure

License Requirements

Special License Types

Application Procedures

Special License Types

Business entities

- ❑ Partnership
 - only licensed brokers can be partners
 - one partner must be managing broker & in resident
 - practicing employees must be licensed

- ❑ Corporation
 - one officer must be broker & IN resident
 - highest ranking employee in IN must be broker
 - employees must be licensed to practice

Acquiring an Indiana Real Estate License

Activities Requiring
Licensure

License Requirements

Special License Types

Application Procedures

Special License Types

Business entities

- ❑ Limited Liability Company – member managed
 - Only licensed brokers may be members
 - One member must be IN resident or managing broker
 - Employees must be licensed to practice

- ❑ Limited Liability Company – manager managed
 - LLC must have broker residing in IN or
 - Highest ranking employee must be licensed

Acquiring an Indiana Real Estate License

Activities Requiring
Licensure

License Requirements

Special License Types

Application Procedures

Special License Types

Nonresident licenses

- ❑ To obtain license
 - pass law section of exam
 - file consent to allow action to be taken against the nonresident in any IN county

- ❑ Requirements waived if
 - other state's requirements are equivalent
 - if broker attests familiarity with IN statutes
 - other jurisdiction gives equal privileges to IN licensees

Acquiring an Indiana Real Estate License

Activities Requiring
Licensure

License Requirements

Special License Types

Application Procedures

Special License Types

Military personnel

- ❑ Service members can be licensed if
 - completed military training program
 - awarded occupation specialty
 - worked in specialty to meet or exceed IN requirements
 - practiced real estate for 2 of last 5 years
 - no acts that are grounds for discipline
 - paid licensure fees

Acquiring an Indiana Real Estate License

Activities Requiring
Licensure

License Requirements

Special License Types

Application Procedures

Application Procedures

- ❑ Complete broker course
- ❑ Submit license application and fee
- ❑ Pay exam fee, pass state exam within 1 year of course completion
- ❑ Pay license fee within 1 year of passing exam
- ❑ If fail to pass within 1 year
 - Commission voids application
 - applicant must reapply, pay fee, and retake exam.

Key Takeaways