

Maine Real Estate Commission

The Designated Broker Course

Outline

Approved: 8/15/2013 Effective: 6/1/2014
This outline replaces the outline approved May 2008.

Requirement Overview:

This course, at a minimum, must be 50 hours in length; include 3 quizzes and a final exam; meet other standards established in the Minimum Guidelines for The Designated Broker Course approved January 24, 2013 attached and made part of this outline; and the instructor must hold a Real Estate Broker license.

Course Objectives:

Upon completion of this course, the licensee will have the fundamental knowledge and skill to open and operate a real estate company. The licensee will understand the designated broker's supervisory role as well as the obligations to licensees, clients, customers and the public.

Exercise topics identified in each section address specific concepts and issues and are intended to be included in course material. In addition, instructors may incorporate other exercises. A variety of teaching methods may be used such as group exercises, role-play, simulations, case studies, etc. The order of topics may be arranged to fit the instructor's teaching style. Course percentages are based on course instruction and do not include quiz and exam time.

► Introduction (1%)

Maine Real Estate Commission expectations, course overview, facility information, attendance, snow days, grading, etc.

► Business Plan (10%)

Goal: *The goal of this section is to provide an overview of elements of organizing a real estate company.*

Objectives: *Licensee will be able to identify:*

- steps necessary to establish a legal entity
- systems to manage/operate the entity
- Income and expenses to open a real estate company

❖ Initial Organization of Company

- Mission Statement
- Written goals and philosophies
- Scope of services (residential, commercial, land)
- Company makeup:
 - ✓ Ownership
 - Sole proprietorship
 - Partnership
 - Limited partnership
 - Limited Liability Company
 - Corporation (S or C)
 - ✓ Trade Name
 - ✓ Franchise or independent
 - Local affiliation or large national corporation
 - Trade association membership
- Company Policy Manual

- Policy on Real Estate Brokerage Relationships
- Organizational chart for company, including staffing requirements and qualifications
 - ✓ Independent contractor agreements
 - ✓ Employer/employee status
- Physical office requirements
 - ✓ Location
 - ✓ Visibility
 - ✓ Floor plan
 - ✓ Parking
 - ✓ Public accommodations (Americans with Disabilities Act - ADA)

❖ Financial Planning

- Projected start-up costs
- Sales Projections
- Income and Cost Projections
- Cash Flow
- Accounting Software

Exercise Topics:

- ☑ Create an organizational chart for your company
- ☑ Choose a form of ownership and why
- ☑ Layout floor plan sketch to ensure compliance with law and rules (confidentiality & ADA)
- ☑ Develop pro forma budget for start-up costs and monthly budget
- ☑ Importance of Independent Contractor Agreement; issues not addressed in agreement

► Licensing the Office (2%)

Goal: *The goal of this section is to develop the designated broker's ability to comply with office licensing requirements.*

Objectives: *Licensee will be able to identify and manage licensing requirements.*

❖ Licensing Issues (32 MRSA § 13171, § 13172, § 13173, § 13174)

- Requirements for agency licensing (all practice occurs under the auspices of the agency license)
- Agency changes (32 MRSA §13175)
- Trade names (32 MRSA §13176)
- License contents and display (32 MRSA §13181)
- Agency license renewal (32 MRSA §13182)
- New license, transfer of license and renewal (32 MRSA §13194, §13195 & §13197)

Exercise Topics:

- ☑ Research proposed trade name for sample company to determine that it is not misleading
- ☑ Download and complete license application for sample company

► Designated Broker Job Description (11%)

Goal: *The goal of this section is to identify the requirements of maintaining a real estate company and the responsibility of the designated broker.*

Objectives: *Licensee will be able to create policies, procedures and systems to supervise and oversee a company consistent with license law and rules. (Title 32 Chapter 114 subchapter 3, rule Chapter 400 Sections 1, 3 & 4 and Chapter 410).*

❖ License Law

- Brokerage Agreements (32 M.R.S.A. §13177-A)
- Termination of employment (32 M.R.S.A. §13180)
- Acts authorized (32 M.R.S.A. §13183)

- ✓ Delegation (400(1)(C))
- Real Estate Brokerage Relationship Disclosure (32 M.R.S.A. §13279)

❖ **Chapter 400**

- Supervision of employees/affiliated licensees (32 M.R.S.A. §13179 and 400(1))
- Records retention (32 M.R.S.A. §13184 & chapter 400(3))
- Examination for compliance (chapter 400 (4))

❖ **Responsibility to supervise licensed and unlicensed staff to comply with Chapter 410**

Exercise Topics:

- ☑ Outline what brokerage forms company will use with consumers
- ☑ Outline policies and procedures that enable DB to review, manage and oversee activities required in Chapter 400(1) 1-5 (e.g. checklists)
- ☑ Describe a system for interviewing new licensees for your company
- ☑ List steps to introduce new licensees to the company
- ☑ Describe the DB's tasks when a licensee leaves the company
- ☑ Supervision of licensed and unlicensed assistants to licensees
- ☑ Supervision of website advertising

► **Policy Manual (10%)**

Goal: *The goal of this section is to outline and discuss company policy manual requirements.*

Objectives: *Licensee will be able to:*

- *Identify components of a policy manual*
- *Explain the purpose of a policy manual*

❖ **Required content of a company policy and procedure manual**

- General company policies and procedures (13179, Chapter 400, 1-2)
- Real estate brokerage relationships policy (13277, Chapter 400 1-4)
 - ✓ Review types of real estate brokerage relationships policies
 - ✓ Advantages and disadvantages of each
- Policies and procedures: state and federal law
- Complaint and adjudicatory process (32 MRSA § 13069(6))

❖ **Optional content**

Exercise Topics:

- ☑ List mandatory and optional topics to be addressed in your company policy manual
- ☑ Outline procedure to respond to a notice of complaint investigation from MREC staff
- ☑ Critique an unclear or incomprehensible policy

► **Trust Account (5%)**

Goal: *The goal of this section is to enable licensees to open and maintain a legally compliant real estate trust account.*

Objectives: *Licensee will be able to identify and describe the requirements for opening and maintaining a real estate trust account. (32 M.R.S.A. §13178 & chapter 400 sections 2 & 3)*

❖ **Real Estate trust accounts**

❖ **Other trust accounts**

❖ **Release of disputed/undisputed earnest money**

Exercise Topics:

- ☑ Outline the requirements of establishing and maintaining a legally compliant real estate trust account
- ☑ Describe the steps involved in making deposits and withdrawals compliant with law, rule and company policy

- Describe the steps involved if a seller refuses to release an earnest money deposit to a buyer

► **Monitoring Compliance/Training (5%)**

Goal: *The goal of this section is to enable students to effectively train new and experienced licensees regarding compliance with laws, rules and company policy. 32 M.R.S.A. §13179, Chapter 400 (1)(G) & (2)*

Objectives: *Licensee will be able to:*

- *explain the importance of training*
- *establish a training program for affiliated licensees and staff to enable them to be competent.*

- ❖ **Training of newly licensed licensees (including the Documented Field Experience Form)**
- ❖ **Training licensees new to the company who have been previously licensed**
- ❖ **Ongoing supervision and training for licensees and unlicensed staff**
- ❖ **Optional training (interpersonal skills, sales, negotiation, etc.)**

Exercise topics:

- Outline procedure to confirm your affiliated licensees are properly licensed
- Describe possible contents of a personnel file
- Identify sources of law, rule and practice changes
- Outline subject areas and timing of a training program for newly licensed licensees, experienced licensees and unlicensed staff.

► **Risk Management (7%)**

Goal: *Explore risk reduction techniques.*

Objectives: *Licensee will be able to identify:*

- *Identify the major risks to an agency*
- *Identify risk management techniques*

❖ **Explore Risk Reduction and Risk Management**

- Policy and Procedure Manual as a risk reduction tool
 - ✓ Review manual
 - ✓ Update manual
 - ✓ Notify employees and affiliates of changes
- Record keeping (maintenance and retrieval)
 - ✓ Checklists for procedures
 - ✓ Document sources of information
 - ✓ Telephone, email, electronic message and fax logs
- Obtain written declinations (i.e. declining service contracts, home inspections, radon tests)
- Insurance policies (coverage limitations)
 - ✓ Errors and Omissions
 - ✓ Property
 - ✓ Liability
- Resolving issues between real estate companies in the best interest of the clients
 - ✓ Procuring cause
 - ✓ Differences in company policies
 - ✓ Offers of cooperation and compensation
- Personal safety

Exercise Topics:

- Outline the major risks to a company and your ongoing procedures to limit the risks arising from transactions
- How will you limit procuring cause disputes with other companies?
- Identify what is covered by errors and omissions insurance; how is cost of claim resolved if issue not covered?

- Outline a personal safety policy
- How do you establish a record that client refused advice?

► Problem Identification and Resolution (2%)

Goal: *Explore problem resolution techniques for issues related to real estate brokerage.*

Objectives: *Licensee will be able to:*

- *Apply problem-solving techniques to solve real estate brokerage issues.*

❖ Optional Model for Effective Problem-Solving

- Define the problem and issues
 - ✓ Be clear about what the problem is.
 - ✓ Is it legal, ethical, professional or moral?
 - ✓ Different stakeholders may have different views of what the issues are.
 - ✓ Listen to each person with the intent to understand and not evaluate.
- Identify the stakeholders and their interests
 - ✓ Who is affected by the outcome of this problem?
 - ✓ Interests are the needs that are satisfied by any given solution.
 - ✓ How are the stakeholders affected by the problem?
 - ✓ This is the time for active listening to understand the complete problem.
- List the possible options.
 - ✓ Brainstorm or Green Light the options creatively.
 - ✓ Do not become attached to any one option
 - ✓ At this stage do not evaluate the options.
- Evaluate the options.
 - ✓ What are the pluses and minuses of each option?
 - ✓ How are the stakeholders affected by each option?
 - ✓ Separate the evaluation of options from the selection of options.
- Eliminate any options that are not feasible.
 - ✓ What's the best option, in the balance?
 - ✓ The best solution is the one that satisfies everyone's interests.
 - ✓ Is there a way to combine a number of options together for a more satisfactory solution?
- Make a commitment to the choice, put it in writing.
 - ✓ Agree on the solution and put it in writing.
 - ✓ The written solution will help the parties to review the details as agreed upon, and the implications of the decision.
- Implement, monitor and evaluate the decision.
 - ✓ Identify who will you monitor compliance and follow-through.
 - ✓ Identify any problems that were experienced with the decision.
 - ✓ Incorporate the decision into the Policy Manual if appropriate.
 - ✓ Use this experience as a case study for the office if appropriate.

Exercise Topics:

- Apply problem-solving model to seller and buyer issues
- Use model to address an ethical dilemma

► Financing (6%)

Goal: *The goal of this section is to identify, analyze and provide appropriate advice concerning financing issues consistent with the duties of the licensee.*

Objectives: *Licensee will demonstrate:*

- *an understanding of financing*
- *ability to identify financing issues, manage transactions and solve issues*

❖ Awareness of finance alternatives based on buyer and property

- FHA
- VA
- MSH
- Rural Development
 - ✓ Direct
 - ✓ Guaranteed
- Conventional
 - ✓ Insured
 - ✓ Uninsured
- Portfolio/Local banks
- Cash

❖ **Impact of financing (i.e. loan to value, appraisal, property condition, seller concessions)**

- Role of seller agent
 - ✓ Does agent understand how type of financing may affect seller and convey this to seller?
 - ✓ Is financing a viable option for property?
 - ✓ Does seller understand that buyer could be denied financing any time prior to closing (job loss, change in credit score, low appraisal)
- Role of buyer agent
 - ✓ Prequalification/Pre-approval prior to writing offer
 - ✓ Does agent understand financing requirements and showing properties suitable for financing?
 - ✓ Does buyer understand how their actions may affect credit score and financing?
 - ✓ Buyer agent duty to seller §13274(2)(A)
- Role of transaction broker

❖ **Compliance with financing cause (i.e. dates, loan type)**

- Role of seller agent
- Role of buyer agent
 - ✓ Communicate regularly with loan officer
 - ✓ Update loan officer with price changes and other conditions
- Role of transaction broker
 - ✓ Supervise dates
 - ✓ Communicate progress

❖ **Mortgage fraud**

- Using two contracts
- Misrepresentation of assets
- Money outside of closing
- Real Estate Settlement Procedures Act (RESPA)
- Truth in Lending/Advertising (Regulation Z)

Exercise Topics:

- Identify the issues of an offer written as cash when buyer intends to get home equity loan
- Loan officer qualifies buyer for loan that is not best alternative for buyer; what are licensee's responsibilities to customer/ client
- Outline potential issues of money paid outside of closing

► **Other Laws (6%)**

Goal: *The goal of this section is to develop the licensee's ability to handle issues that arise from various laws in the practice of real estate brokerage.*

Objectives: *Licensee will be able to identify potential issues, demonstrate information gathering skills, analyze the issue and provide appropriate solutions.*

❖ **Municipal/State/Federal Laws**

- Anti-trust

- ✓ Commission policy
- ✓ Boycotting
- ✓ Tying
- ✓ Allocation
- Civil Rights & Fair Housing
 - ✓ Protected Classes - State of Maine
 - ✓ Protected Classes – Federal
 - ✓ Prohibited Acts
- Americans with Disabilities Act (ADA)
- Land Use
 - ✓ Zoning (shoreland, historical district, etc.)
 - ✓ Subdivision
 - ✓ Buildable lot
 - ✓ Easements (conservation, driveway, etc.)
 - ✓ ROWs
 - ✓ Deed Restrictions
 - ✓ Restrictive Covenants
 - ✓ Curb cuts
 - ✓ Other
- Environmental
 - ✓ National Resource Protection Act
 - ✓ Vernal Pools
 - ✓ Significant Wildlife Habitat
 - ✓ Other
- Code Conformance
 - ✓ Minimum lot size
 - ✓ Setbacks
 - ✓ Building and driveway permits
 - ✓ Other
- Taxation/exemptions
 - ✓ Capital Gains
 - Principal residence
 - Non-principal residence
 - ✓ Foreign Investment in Real Estate Property Tax (FIRPTA)
 - ✓ 1031 Tax Deferred Exchanges
- Truth in Lending/Advertising (Regulation Z)
 - ✓ Advertising
 - ✓ Credit Terms

Exercise Topics:

- Seller wants to sell a lot cut from a larger lot, what issues/steps are involved
- Shoreland property converted to year-round use, what issues/steps are involved

► **Ethics (5%)**

Goal: *The goal of this section is to enable students to develop a climate of best practices within their company.*

Objective: *Licensee will be able to identify ethical issues and evaluate ethical practices.*

❖ **Evaluate Ethical Practices**

- Ethical, Legal and Company Policy
- Ethical dilemmas
- Models for ethical decision making
- Code of Ethics
 - ✓ Personal
 - ✓ Office
 - ✓ Professional industry code

Exercise Topics:

- ☑ Identify ethical dilemmas for clients and customers

► Initial Contact to Under Contract (15%)

Goal: *The goal of this section is to enable licensees to identify and resolve a variety of issues that arise from the first contact with a buyer/seller to under contract status from the perspective of the Designated Broker.*

Objectives: *Licensee will be able to:*

- *Identify and manage issues for clients/customers from first contact to contract*
- *Demonstrate the ability to identify and solve issues related to brokerage agreements*

❖ The Real Estate Brokerage Relationships Form 32 MRSA §13279 & chapter 410(9)

❖ Real Estate Brokerage Forms

- Listing Agreement
- Buyer Agent Agreement
- Appointed Agent Agreement
 - ✓ Additional appointments
 - ✓ Termination
 - ✓ DB must be appointed to provide client-level services
- Disclosed Dual Agency Agreement
 - ✓ Disclosed Dual Agent is not a Transaction Broker
 - ✓ What Disclosed Dual Agent can and cannot do (32 MRSA § 13275)
- Addenda and amendments
 - ✓ Definition
 - ✓ Poorly drafted/incomplete
- Unfamiliar forms
 - ✓ Review document (do not assume knowledge of document)
- Agreement with company, not licensee
- No verbal terms
- Obtain signatures of all parties
- Copies provided at time of signature 410(5)

❖ Market Value §14004 & rule chapter 410(3)

- Opinions of Value without compensation
- Broker's Price Opinion (410(3), 32 MRSA §§13251-A & 14004)
 - ✓ Real Estate Brokerage Relationship Form required
 - ✓ Must have brokerage agreement
 - ✓ Payment made to company, not the licensee

❖ Property Disclosures (not a "Seller Disclosure")

- Mandatory and optional disclosures
- Responsibility of listing and selling licensees
 - ✓ Required for all residential properties or commercial with "residential component"
 - ✓ Who fills out the form
 - ✓ Sources of information (seller only once source)
 - ✓ Blanks on form
 - ✓ Inaccurate information
 - ✓ Written updates
- Unfamiliar forms
 - ✓ Review document (do not assume knowledge of document)

❖ Advertising 400(1)(1)(E,H & I), 410(1) & 13(3)

- DB must review, manage, oversee and consent to all advertising
 - ✓ Advertising another company's listings
 - ✓ Print vs. electronic advertising
 - ✓ Internet sites and domain names affiliated licensees are using

❖ Inducements 410(11)

- Legal vs. Illegal

❖ Purchase and Sale Agreements

- Confidentiality 400 (12)
- Contract clauses, addenda and amendments
- When an offer becomes a contract
- Imputed knowledge
- MREC Real Estate Transactions Offers/Counter Offers – Agent-Client Guidelines
- Resolution of issues surrounding clauses (including timelines)
- Copy provided at time of signature 410(5)
- Unfamiliar forms
- No verbal amendments

Exercise Topics:

- Verbal terms were not made part of written listing agreement, i.e. “will tear up the agreement if you are unhappy”. A change to any term of buyer/seller listing agreement must be in writing and signed by buyer/seller.
- Suspension vs. termination – do client and agent understand the status of the agreement?
- Appointed agent is no longer acting as the appointed agent for a client but the affiliated licensee remains with the company. Should a written termination of appointed agent role should be prepared and signed by client?
- The designated broker is the appointed agent and another affiliated licensee is not designated to fulfill the duties imposed by c. 410(8)(1)(B). Identify potential issues
- Can a Disclosed Dual Agent do a Comparable Market Analysis (CMA) for buyer? If so, is a copy provided to Seller?
- Appointed Agency office – confidentiality issues during office meetings and caravans
- Complete a sample addendum and amendment to a contract (financing, extension of contract, etc.)
- Selling licensee receives property disclosure on bank owned property – all items marked “unknown”
- Designated Broker must have a policy to review, manage and oversee the advertising/promotion or real estate. Write a sample policy.

► Under Contract to Closing (15%)

Goal: *The goal of this section is to enable licensees to identify and resolve a variety of issues that arise prior to, at, and after closing from the perspective of the Designated Broker.*

Objectives: *Licensee will be able to:*

- Calculate buyer costs and seller proceeds
- Demonstrate the ability to review and identify TILA-RESPA Integrated Disclosure - Closing Disclosure issues
- Identify and manage issues for clients/customers from contract to closing

❖ Under contract to closing

- Under contract checklist
- File review (continuous)
 - ✓ Who is reviewing file and how often (DB can designate but still responsible)
 - ✓ Licensees’ duty to keep DB informed 410(13)(1)
 - ✓ File location
 - ✓ Contents of file
 - ✓ Submission of documents w/i 5 days
- Potential Issues
 - ✓ Do buyer and seller understand issues may affect closing date?
 - ✓ Title
 - Fraud
 - Liens
 - Exclusions
 - Missing heirs
 - Other

- ✓ Inspections
 - Issues discovered in inspection noted on disclosure
 - Seller will not allow test (radon testing in warm weather)
 - Other
- ✓ Appraisal
 - Low appraisal
 - Unique property – lack of comps
 - Mandated repairs
 - Other
- ✓ Financing
 - Change in loan type
 - Seller concessions
 - Other
- ✓ Mortgage Loan Inspection (MLI)
 - MLI is not a survey
 - Boundary/encroachment issues
 - Other
- ✓ Title Insurance
 - Marketable
 - Insurable
 - Exceptions
 - Other
- ✓ Homeowner Insurance
 - Electrical issues (knob and tube, fuses)
 - Wood stoves (rentals, multiple fuel sources in flue)
 - Previous claims discovered in CLUE search
 - Withdrawal of insurance
 - Other
- ✓ Walk-through issues
 - House not broom clean
 - Items not left in property or work completed as agreed
 - New issues identified (leak, furnace does not work)
- ✓ Settlement Statements – costs involved (buyer/seller proceeds)
 - ✓ Review thoroughly for errors
- ✓ Compare Loan Estimate with Closing Disclosure
- ✓ Review of deed to be conveyed

❖ **Occupancy**
 ❖ **Post-closing**

- Closed checklist
- Escrow agreements
 - ✓ What can be escrowed
 - ✓ Who prepares agreement
 - ✓ Who holds/disperses money
 - ✓ What is required before money dispersed

❖ **Pros and cons of licensees acting as power of attorney at closings**

❖ **FIRPTA (Foreign Investment in Real Estate Property Tax Act)**

❖ **State of Maine non-resident withholding**

❖ **Coastal/Shoreland Zoning 30-A MRSA §4216**

- Disclosure
- Inspection

Exercise Topics:

- Buyer wants a price reduction after inspections. Seller does not respond, now what?
- Title problem arises – contract allows 30 days to fix
- Walk-through issue noticed a short time prior to closing
- Deed to be conveyed is incorrect
- Outline potential issues of buyer taking occupancy prior to closing
- Outline potential issues with escrow agreements (government financing)

Maine Real Estate Commission Minimum Guidelines for Qualifying Education The Designated Broker Course

**Approved by Commission January 24, 2013
Live Delivery Guidelines - Effective August 1, 2013
Distance Education Guidelines - Effective January 24, 2013**

These guidelines replace the May 2008 guidelines.

Course must comply with the provisions of Chapter 360 Section 3 of the Commission's rules and:

- Course length - 50 hours
- Passing Grade 75%
- Time allotted for quizzes/final exam shall not exceed 10% of course length.
- Quizzes – 3 consisting of a minimum of 60 questions total; question format to be objective with definitive answer; and quizzes to be administered at appropriate intervals to assess student's understanding of material covered to date.
- Final exam – minimum of 80 questions weighted according to the percentage assigned to the topic in the course outline; question format to be objective with definitive answer; final exam to be administered at the end of the course and proctored by course instructor or other appropriate proctor. (A proctor must be a disinterested in-person third party who is not a relative or friend of the student, does not have a vested interest in the student's exam score, and is not a real estate licensee other than the course instructor or another instructor of a course approved by the Commission. Examples of an appropriate proctor include, but are not limited to, a librarian, teacher, school counselor, police officer, and military officer of higher rank than the student. Schools are encouraged to have written agreements with proctors regarding identifying the student taking the exam, security procedures to be implemented during the exam as well as collection and submission to the course instructor of any test materials.)
- Students must receive the following at the beginning of the course:
 - ✓ Course outline
 - ✓ Maine Real Estate Commission Course Guidelines
 - ✓ Instructor contact information
 - ✓ Technology requirements to complete the course
 - ✓ Policy of cheating or misrepresenting student identity
 - ✓ Learning objectives
 - ✓ Course completion deadline

Additional guidelines for Live Delivery Courses:

- Required attendance 90%

- Quizzes and Final Exam - no open book or take home and scored by instructor
- Course grade weighting – final exam 50%; quizzes 30%; the remaining 20% may include case studies, open book/take home exercises, participation etc.

Additional guidelines for Distance Education Courses:

Course shall be certified by the Association of Real Estate License Law Officials (ARELLO) or meet the following guidelines:

- Delivery formats limited to CDROM-based training; Internet/web-based or Webinar-type courses. No paper correspondence. Videotaped delivery of a live pre-licensing program is not acceptable.
- CDROM/Internet/Web-based delivery methods must provide student-instructor interactivity and student content interactivity in the form of hyperlinks to vocabulary words, quizzes, links to supplemental reference material, case studies and remediation exercises (i.e. when a question is answered incorrectly some indication of why the answer was incorrect and the appropriate answer).
- Evidence of time studies to ensure the average completion time of the course is consistent with the hours established for each course. Each hour of a distance education course is equivalent to one hour of live classroom instruction.
- Quiz and Final Exam questions to be drawn from a pool of questions.
- Students must achieve a passing grade (75%) on each quiz to move ahead.