

Disclosure Requirements for Real Estate Licensees with a Financial Interest in a Transaction

In the real estate industry, transparency and ethical conduct are paramount. Real Estate licensees must adhere to strict disclosure requirements, especially when they have a financial interest or receive anything of value beyond the commission they earn for selling the property. Failure to disclose such interests can lead to legal consequences, disciplinary actions, and loss of consumer trust.

Understanding Financial Interest in a Transaction

A real estate licensee is considered to have a financial interest in a transaction when they stand to gain financially beyond their standard commission. This may include but is not limited to:

- Ownership interest in the property being sold or purchased
- Ownership interest in a title company, mortgage company or other service provider to the transaction.
- Receipt of “free” services or discounted benefits from a company or entity that stands to benefit financially from the real estate transaction. Some examples include:
 - “Free or Discounted” transaction coordinator services
 - “Free or Discounted” farming software
 - “Free or Discounted” printing of flyers / marketing materials
 - “Free or Discounted” postage / mailings of marketing materials
 - “Free or Discounted” attendance at an event or conference
- Receipt of payment from a company or entity involved in the transaction for:
 - Consulting
 - Advising
 - Recording a Podcast

Disclosure Obligations

Arizona Administrative Code, Title 4. Professions and Occupations, Chapter 28. State Real Estate Department, Article 11. (R4-28-1101) specifies that a licensee owes a fiduciary duty to the client and shall protect and promote the client’s interests. In addition to those duties administrative law requires licensees to deal fairly with all parties to a transaction.

Specifically, R4-28-1101(E) requires that licensees shall not act directly or indirectly in a transaction without informing the other parties in the transaction, in writing and before the parties enter any binding agreement, of a present or prospective interest or conflict in the transaction, including that the:

1. Salesperson or broker has a license and is acting as a principal;
2. Purchaser or seller is a member of the salesperson’s, broker’s, or designated broker’s immediate family;

3. Purchaser or seller is the salesperson's or broker's employing broker, or owns or is employed by the salesperson's or broker's employing broker; or
4. Salesperson or broker, or a member of the salesperson's or broker's immediate family, has a financial interest in the transaction other than the salesperson's or broker's receipt of compensation for the real estate services.

Other Considerations

Failure to disclose a financial interest or the receipt of a thing of value can lead to serious consequences. To ensure compliance and maintain professional integrity, a real estate licensee should:

- Familiarize themselves with state and federal laws. There are laws outside of the Department of Real Estate's enforcement that may need to be considered depending on the type of financial interest a licensee has.
- Make disclosures early and in writing.
- Encourage clients to seek independent legal or financial advice when necessary.
- Keep detailed records of all disclosures and communications.

Real estate licensees must prioritize dealing fairly with all parties and their fiduciary duties to their client when they have a financial interest in a transaction beyond their commission. Proper disclosure protects both consumers and professionals, ensuring ethical and fair dealings in the real estate market. By adhering to disclosure laws and best practices, licensees can build trust, avoid legal pitfalls and uphold the integrity of the real estate profession.