

**Short Title: Guidance for using Electronic Real Estate Transaction Management and/or Document Storage Programs**

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under A.R.S. § 41-1033 for a review of the statement.

**Description of Practice/Procedure:**

Designated brokers may implement a Transaction Management (TM) program for internal standardization of document storage, so long as the document storage program adheres to the guidelines mandated by the Arizona Revised Statutes ("A.R.S." or "statutes") and the Arizona Administrative Code Rules ("A.A.C. R" or "rules") applicable to the Arizona Department of Real Estate ("Department" or ADRE).

Understanding there are several computer based TM and/or document storage programs ("TM system" or "electronic storage system"), this advisory provides guidance and outlines the responsibilities of brokers who are using or intend to use any electronic record program. This advisory also provides guidance to brokers using electronic record programs who have signed or intend to sign the Department's User Agreement, which provides the Department access to their electronic storage systems.

**Electronic Record Keeping**

1. **Backing up records:** Transaction and employment records required to be maintained pursuant to statute or rule, must be backed-up (duplicated and stored in a secure, offsite location) in a manner allowing restoration in the event electronic data maintained at the principal place of business is destroyed.
2. **Production of records:** Records must be reproducible for the Department, at the broker's expense, in a legible, paper form ("hard copy") upon the request of the Commissioner, or the Commissioner's representative, for auditing, inspection, or investigation purposes. Brokers who maintain electronic records in a computer based TM and/or document storage program may provide the Department with electronic access to records, unless a hard copy is specifically requested by the Department.
3. Electronic records maintained in an electronic storage system should be legible, exact duplicates of the original documents.
4. **Maintenance of a log:** Brokers using web based TM and/or document storage programs shall maintain a log in a chronological or other systematic manner that lists each real estate purchase contract or lease agreement, and identifies the file in which these documents are maintained. If the web based TM and/or document storage program maintains this log or list electronically, it should be made easily accessible upon request by the Commissioner or the Commissioner's representatives. If the web based TM and/or document storage program is not capable of maintaining this log or list electronically, the broker shall maintain a separate list or log in either written or electronic form and shall make it available to the Commissioner or the Commissioner's representative upon request.
5. **Notification requirements:** If the file servers containing a broker's web based TM and/or document storage program are directly or indirectly owned by the broker, the broker shall inform the Commissioner in writing of the location of these file servers. If the file servers containing a broker's web based TM and/or document storage program are not directly or indirectly owned by the broker, the broker shall inform the Commissioner in writing of the legal address and name of the entity responsible for storing such records. The broker may be required to show evidence that the broker's electronic records are backed-up in accordance with this SPS, and SPS 2005.06 addressing "Electronic Record Keeping."
  - a. **ADRE Online Review/Audit Option:** A broker using a web based TM and/or document storage program may opt to sign the Department's User Agreement and provide the Department with direct access to his/her electronic storage system. Providing the Department access to brokers' electronic storage systems is intended to enable efficient, streamlined exchanges of information with the

Department, increase efficiency within the brokerage, and assist in ensuring compliance among real estate salespersons and associate brokers licensed to brokers. This capability is available using a web based TM and/or document storage program if a broker complies with the following requirements: (1) the broker must sign a User Agreement with ADRE allowing ADRE internet access to all required documents; (2) the broker must be able to produce the required documents and files in hard copy format if hard copies of documents are specifically requested by the Commissioner or the Commissioner's representative; and (3) the broker must sign a guarantee that the documents and files will be maintained for the mandatory time frames set forth in the relevant statutes and rules including, but not limited to, A.R.S. §§ 32-2151.01, 32-2153(A)(17) and 32-2175.

- b. The Commissioner's access to broker's files shall be used for:
  - i. Preliminary review/research of consumer complaints against brokers and salespersons;
  - ii. Routine audits or audit reviews of broker files to ensure compliance with any requirements in the relevant statutes and rules, including but not limited to ensuring that brokers properly maintain documents in a timely manner; and
  - iii. Any other purposes the Commissioner deems necessary to protect Arizona consumers.

### **Electronic Signature**

1. A broker's statutory review of contracts and agreements maintained on an electronic TM and/or document storage system may be recorded through a dated secure electronic signature in compliance with A.R.S. § 44-7031. The TM and/or document system must have a means of demonstrating, in accordance with A.R.S. §§ 44-7032 thru 44-7034 as applicable, that when the signature was made, the signature was:
  - a. Unique to the person using it;
  - b. Capable of verification;
  - c. Under the sole control of the person using it; and
  - d. Linked to the electronic record it relates to in such a manner that if the record were changed the electronic signature would be invalidated;
2. Electronic review of any document is permitted in lieu of actual initials on a document, providing that such electronic review is recorded in an unalterable history or log file.
3. The broker must enforce a written supervision policy requiring personal computer security that, at a minimum, requires each person with electronic signature authority and capability to lock or sign off his/her computer every time he/she walks away from the computer.
4. The broker must have a backup system defining how and when contracts and agreements would be reviewed in situations where the broker's computers become inaccessible for an extended period of time.
5. The electronic TM and/or document storage system must have the ability to create a secure history log of all activity for electronic signatures or broker review which can be reviewed by Department auditors and investigators.

Authority: A.R.S. §§ 32-2108, 32-2151, 32-2151.01, 32-2151.02, 32-2153, 32-2175, and A.A.C. R4-28-701, R4-28-802, R4-28-803, R4-28-804, R4-28-805, R4-28-1101, R4-28-1102, R4-28-1103, R4-28-1303

Policy Program: Licensing/Regulation

Effective Date: 4/8/2010



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**USER AGREEMENT GRANTING DEPARTMENT OF REAL ESTATE ACCESS TO USER'S ELECTRONIC MANAGEMENT SYSTEM**

**I. Parties**

This Agreement is made and entered into by the Arizona Department of Real Estate (hereafter referred to as "ADRE") and \_\_\_\_\_, a licensed designated broker (hereafter referred to as "Broker") for the brokerage licensed with ADRE under the name \_\_\_\_\_ (hereafter referred to collectively as "User" of the electronic transactional management system).

**II. Background and Purpose**

User is required by law to maintain certain records and to make those records available to ADRE for inspection upon notice with unlimited access. User currently uses an electronic transactional management system ("TM Program"), a computer or web-based transaction management system and/or document storage program, for maintenance of real estate records. The purpose of this Agreement is to grant ADRE electronic access to User's TM Program to enable streamlined exchanges of information when ADRE conducts records inspections as authorized by law, thereby minimizing disruption to User's business and making the process more cost-efficient for both User and ADRE.

**III. Responsibilities**

A. User agrees to:

1. Grant ADRE electronic, remote access to User's TM Program for the purpose of conducting records inspections authorized by law.
2. Set up on its TM Program an access code or other necessary authorization that will allow ADRE to obtain electronic, remote access to the records in the TM Program and to provide ADRE with the access code or other information needed to obtain that access.
3. Provide ADRE prompt access to User's records upon notice if ADRE is unable to remotely access User's electronic records for any reason.
4. Produce and provide legible, readable paper copies of any records maintained in accordance with law to ADRE upon notice.
5. Maintain complete records of all transaction and employment records in accordance with law.

B. ADRE agrees to:

1. Limit its access and use of User's TM Program to examining records in connection with User's real estate business as authorized by law.

2. Conduct inspections of User's records using its electronic, remote access to User's TM Program in lieu of requiring in-person access or physical production of User's records when reasonably possible.
3. Notify Broker by email when ADRE intends to access the User's TM Program.

#### **IV. General Terms and Conditions**

- A. Term: This Agreement is effective upon execution by both parties. This Agreement will continue in effect unless either party gives the other party written notice of its intent to terminate the Agreement at least thirty days in advance of the termination date. Termination does not relieve a party of its obligations incurred prior to the termination date.
- B. Amendments: User may only amend this Agreement with written consent of the Commissioner of ADRE. ADRE may amend this Agreement upon providing User with thirty days notice of the amendments, though User may reject the amendments by providing written notice of intent to terminate the Agreement in thirty days before the amendments go into effect.
- C. Applicable Law: This Agreement shall be governed and interpreted by the laws of the State of Arizona.
- D. Responsibility for Records: User has full responsibility for the accuracy, adequacy, and completeness of the records contained in its TM Program.
- E. Ownership: User warrants that it is the owner of or has the right to use the TM Program and has authority to permit ADRE access to the TM Program.
- F. Equipment: ADRE shall not be responsible in any manner for errors or failures of any hardware or software in User's possession. User shall promptly correct, at its own expense, any errors or failures resulting from the malfunction of the TM Program's software or hardware used in connection therewith.
- G. Malicious Programs: User warrants that the TM Program does not and will not contain any computer virus, disabling device, programming code, or instructions intentionally constructed with the ability to damage, interfere with, or otherwise adversely affect computer programs, data files, or hardware.
- H. Entire Agreement: This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements relating hereto, written or oral, between the parties.
- I. Indemnification: User agrees to indemnify, defend, and hold harmless ADRE from all damages of any kind, foreseen or unforeseen, that may arise as a result of this Agreement.
- J. ADRE Disclaimer: ADRE makes no promises, guarantees, or representations that its review or access of records contained in User's TM Program constitutes approval, ratification, or assumption of responsibility for the content or condition of User's records. ADRE specifically disclaims any liability for harm to User arising out of ADRE or User's use of the TM Program, including, but not limited to, damages incurred as a result of viruses, unauthorized access, User's inability to use the TM Program, or programming devices that might access, modify, delete, damage, corrupt, deactivate, disable, disrupt, or otherwise impede in any manner the operation of any of User's software, hardware, data, or property. This Agreement does not preclude or mandate legal action by ADRE for any violations

discovered while accessing the TM Program. Except as specifically provided in this Agreement, no other warranties or conditions, express or implied, are made or given by ADRE.

- K. Headings, Construction: The paragraph and section headings in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation of this Agreement.
- L. Severability: If any provision of this Agreement is held invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall nevertheless continue in full force and effect.
- M. Conflict of Interest: This Agreement is subject to cancellation pursuant to A.R.S. § 38-511.
- N. Arbitration: To the extent required pursuant to A.R.S. § 12-1518, the parties agree to use arbitration to resolve any dispute arising out of this Agreement.
- O. Audit: Pursuant to A.R.S. § 35-214, all books, accounts, reports, files and other records relating to this Agreement shall be subject at all reasonable times to inspection and audit by the State for five years after completion of this Agreement. Upon notice request, the original of such records shall be produced at ADRE, 2910 N. 44<sup>th</sup> Street, Phoenix, Arizona 85018.
- P. Nondiscrimination: The provisions of Executive Order 75-5, as amended by Executive Order 2009-09, are incorporated herein by reference. These provisions mandate, in part, that contractors will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex or national origin.
- Q. Limitations: Nothing in this Agreement shall be construed as limited or expanding the statutory responsibilities of the parties or relieving the parties of any obligation or responsibility imposed by law.
- R. Parties in Interest: This Agreement shall bind User, which includes both the employing broker and entity, and its successors and assigns, including subsequent owners, designated brokers, and managers of the User.

**V. Notice**

Notice under this Agreement shall be provided to:

For ADRE:  
Auditing Division  
Arizona Department of Real Estate  
2910 N. 44<sup>th</sup> St.,  
Phoenix, AZ 85018  
auditing@azre.gov

For Broker:  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Email Address: \_\_\_\_\_

**VI. Required Disclosures:** User hereby agrees to disclose information included in “Exhibit A” and incorporated herein by reference. User agrees to promptly update this information if any changes are made to the TM Program.

**VII. Authority**

By signing below, the signatory certifies that he or she has the authority to enter into this Agreement, has read the foregoing, and agrees to accept the provisions herein.

*For Arizona Department of Real Estate:*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Position

*For User - Brokerage:*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Position

*Designated Broker:*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

Designated Broker  
\_\_\_\_\_  
Position

**Exhibit A**

Name of Licensed Real Estate Brokerage: \_\_\_\_\_

Name of Licensed Real Estate Employing Broker: \_\_\_\_\_

**Disclosures Relating to User’s Electronic Transactional Management System**

- A. **Nature of TM Program:** User’s hereby discloses to the Department that its records are maintained on a TM Program that is one of the following (indicate with an “X”):
1. [ ] A web based electronic transaction management and/or document storage program;
  2. [ ] An electronic program maintained on servers owned entirely by the broker; or
  3. [ ] An electronic program maintained on servers of which the broker’s ownership interest extends throughout the mandatory timeframes statutorily required for maintenance of the records.

- B. **TM Program Vendor:** User hereby discloses to the Department that its records are maintained with the following TM Program Vendor:

\_\_\_\_\_

- C. **Access Rights Authorization:** User hereby discloses to the Department that if an access rights user profile or code is necessary for access, the following information is required:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- D. **Address of Offsite Location of Server or Legal Address of Web Provider:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# Granting ADRE Access to AAR TM Files

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Once a broker has opted to sign the User Agreement Between A Licensed Broker And The Arizona Department Of Real Estate For Unlimited Access Rights To Web Based Electronic Records, the broker must complete and send the following to the Arizona Association of REALTORS® (AAR):

Dear AAR,

I have opted to grant the ADRE access to my AAR TM files for audit and investigative purposes. I authorize you to provide that access by:

- Creating an ADRE Auditor Security profile in our AAR TM account.
- Creating an ADRE Auditor profile using the ADRE Auditor Security profile in our AAR TM account, make sure this profile has:
  - auditing@azre.gov as the notification email
  - A password set to never expire (until I send AAR written notice revoking ADRE's access to my firm's AAR TM files)
- Instructing SureClose® to add the ADRE Auditor profile using the ADRE Auditor Security profile to all existing files in our AAR TM account.
- Adding the ADRE Auditor profile using the ADRE Auditor Security profile to all templates in our AAR TM account.
- Sending ADRE the login and password to auditing@azre.gov.

Please notify me at the email address below when this has been accomplished.

Broker's Name (Printed): \_\_\_\_\_

Broker's Signature: \_\_\_\_\_

Broker's Email: \_\_\_\_\_

Broker's Phone: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Date: \_\_\_\_\_

Completed form should be emailed to [tmsupport@aaronline.com](mailto:tmsupport@aaronline.com) or mailed to:

**Transaction Management  
c/o Arizona Association of REALTORS®  
255 E. Osborn Rd., Suite 200  
Phoenix, AZ 85012**

Without this request, AAR will not have the authority to make the changes necessary to provide the Arizona Department of Real Estate access to files.