

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

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**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.", "Commissioner's Rules" 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.

**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 controlled by the broker) 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, [click here](#), addressing "Electronic Record Keeping."
  - a. The Commissioner's access to broker's files shall be used for:
    - i. 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
    - ii. 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; Revised 12/07/2018