

4. Complete signed copy of the initial earnest money agreement, including offer, acceptance or counteroffer, acknowledgment, and any addendum or other document of agreement between the parties forming part of the initial agreement between them. Signatures and initials should include date and time.
5. Final agency acknowledgment to both parties if not included in purchase agreement.
6. A record of who presented the offer (and any counter offers) and to whom, along with any representations (such as the financial ability of the buyer) made by the licensees at the presentation.
7. Full legal description of the property.
8. Zoning and flood zone information where applicable.
9. Seller Property Disclosure Statement.
10. Copy of the earnest money tendered (check, money order, promissory note, cash etc.). Do not color-copy or same-size copy cash.
11. Disposition of earnest money tendered (note redemption, deposit to trust account, receipt from escrow agent).
12. Copy of the listing or co-op office listing information. Many brokers combine the listing and sale files at close of escrow if it was their listing sold.
13. Evidence of timely supervision by the broker (dated initials on all documents of agreement).
14. Any addenda amending (or attempting to amend) the original agreement, including removal of contingencies.
15. CMAs prepared for the buyer or seller related to this sale.
16. Estimates of buyer's closing costs, and/or seller's net proceeds.
17. Copies of inspection reports, repair estimates and clearances.
18. Record of buyer's progress in obtaining financing.
19. Preliminary title report, with evidence that licensee has reviewed it and discussed any significant issues raised by it with represented party.
20. Evidence of all disclosures made by the licensee(s) and of recommendations made that was not acted upon by the principal(s).
21. Copies of all correspondence, to or from the represented party or their authorized representatives. (i.e.: includes emails, faxes, etc.)
22. Licensee's diary notes generated in the sale transaction.

23. Record of problems encountered and who attended the closing.
24. Settlement statement(s).
25. Seller's forwarding address.
26. Reason for fail-sale if it occurred and disposition of earnest money.

**Rejections: Offers & Counteroffers**

1. Disclosed Dual Agency agreement (if applicable).
2. Complete signed copy of the offer, rejection or counter offer(s). All signatures and initials should be identified as to their dates and time.
3. Final agency acknowledgment of existing agency relationship to both parties.
4. Copy of the earnest money tendered (check, money order, promissory note, cash). Do not color-copy or same-size copy cash.
5. Disposition of earnest money tendered (deposit to trust account, returned to offeror, receipt from escrow agent).
6. Evidence of timely supervision by the broker (dated initials on all document of agreement or disagreement).
7. CMAs prepared for the buyer or seller related to this sale.
8. Estimates of buyer's down payment and closing costs, and/or seller's net proceeds.
9. Evidence of all disclosures made by the licensee(s) and recommendations made that were not acted upon by the principal(s).
10. Copies of all correspondence, to or from the represented party or their authorized representative. (i.e.: includes emails, faxes, etc.)
11. Licensee's diary note generated in the proposed sale transaction.

# Guidelines for Record Keeping

## *A Guide for Maintaining Listing Agreements and Transaction Files*



Provided by the  
North Dakota Real Estate Commission

2008



## Preface

This brochure was developed to assist brokers and their licensees in keeping adequate, complete records of their activity, it is not law but a guide for good business practice. Good record keeping minimizes risk and is a hallmark of a professional real estate licensee.

## Introduction

North Dakota brokers are required to maintain adequate records, as defined by law and rules, of all professional real estate activity. Maintaining complete listing and transaction files allows the broker to monitor licensee activities, an important factor in risk management.

**The following lists of records are recommended based upon existing statutory and rule requirements for adequate broker records. In our enforcement of records requirements, the Real Estate Commission understands that adequate records may result without applying “one size fits all” requirements.**

This brochure concerns record keeping for listing and transaction files, not trust accounts for clients.

## Written Company Policy

License law and rules require each office to develop and maintain a written office policy. The policy shall minimally include:

1. Provisions on how to comply with rules on agency relationships.
2. Procedures to ensure protection of confidential information.
3. Provisions regarding supervision and control of licensees, including licensed personal assistants.

## Brokers' Contracts

### Seller Representation

North Dakota law places affirmative duties on sellers' agents including reasonable care and diligence, honesty, presentation of all written offers, disclosure of material facts known by agent, accounting, loyalty, disclosure of conflicts of interest, maintaining confidential information, advising seller to seek expert advice on matters outside of agents expertise, and to continuously make a good faith effort to find a buyer. A broker's completed or final listing file helps fulfill those duties, and should include the following records:

### Real Property Listings

1. A completed and signed copy of the listing.
2. Seller's Property Disclosure Statement completed and signed. (if used)
3. Initial Agency Disclosure Form (record of compliance with written company policy).
4. Disclosed Dual Agency Agreement (if obtained at listing).
5. Lead-based paint addendum (if applicable).
6. Verification of building and lot size: e.g. actual measurements, the tax assessor's record, an appraisal, plat map, or metes & bounds legal description.

7. Zoning and flood zone information where applicable.
8. Tenant and lease or rental information.
9. Record of how pricing was established and reasons for any subsequent price changes: e.g. CMA, appraisal, assessed value, or owner's input.
10. A written record of promises, pledges or agreements made by the listing licensee as part of the effort to obtain the listing.
11. Marketing activities: e.g. ad copy and date(s) of publication or copies of the actual ads, MLS sheet, any flyers, media scripts, MLS tour date, office tour, open house activity.
12. Listing modifications (signed extensions or price changes).
13. Evidence of timely supervision by broker or manager (dated initials on documents of agreement including, but not limited to: original listing, price adjustments, and extensions).
14. Estimates of net sales proceeds provided to seller.
15. As applicable: Condition, Covenants and Restrictions, by-laws, special assessments and any other specialized information.
16. Licensee's diary notes, generated in the listing transaction.
17. Copies of all correspondence to and from the seller or seller's representative. (i.e.: includes emails, faxes, etc.)

## Buyer Representation

Representation of a buyer may be achieved through a written, signed agreement, variously referred to as a buyer's broker agreement or a buyer listing. These agreements impose upon licensees the affirmative duties of reasonable care and diligence, honesty, presentation of all written offers and communications between buyer and seller, disclosure of material facts known by agent, accounting, loyalty, disclosure of conflicts of interest, maintaining confidential information, advising buyer to seek expert advice on matters outside of the agent's expertise, and to continuously make a good faith effort to find a property for the buyer.

### Buyer's Broker Files - Service Agreement (Client File)

The records which are advisable for a broker to maintain under a buyer's service agreement are:

1. Initial Agency Disclosure Form (record of compliance with written company policy).
2. The service agreement (buyer's broker agreement), including arrangements regarding fees.
3. Any writing, acknowledged by the buyer, containing the want list showing what the buyer is looking for, and willing to pay.
4. Financial qualifications of the buyer with documents showing financial ability and credit-worthiness, explaining or noting credit problems.
5. Pre-qualification letters obtained by the buyer from a lender.
6. Disclosed Dual Agency agreement (if applicable).
7. CMAs prepared for the buyer in connection with any actual or proposed purchase.
8. Records of promises, pledges or agreements made by the licensee as part of the effort to obtain the buyer's broker agreement.

9. Marketing activity: e.g. ad copy and date(s) of publication or copies of the actual ads.
10. Record of properties shown.
11. Modifications to, and extensions of, the buyer's service agreement.
12. Evidence of timely supervision by broker (dated initials on all documents of agreement, including service agreement, modifications, extensions).
13. Estimates of buyer's down payment and closing costs if provided.
14. Licensee's diary notes generated in representing the buyer.
15. Copies of all correspondence to or from the buyer or buyer's representative. (i.e.: includes emails, faxes, etc.)

### Buyer Broker's File – No Service Agreement (Customer File)

Brokers' records documenting buyer representation where no buyer's service agreement exists should be kept with the Disclosed Dual Agency agreement (if applicable), and should include:

1. A record of properties shown.
2. CMAs prepared for the buyer in connection with actual or proposed purchase.
3. Good faith cost estimates provided to the buyer.
4. Licensee's diary notes generated in representing the buyer.
5. Copies of correspondence and faxes to or from the buyer or buyer's representative.
6. Pre-qualification letters obtained by the buyer from a lender.
7. Financial qualifications of the buyer.

## Transaction Files

Records should be entered in the file in a timely manner as they are produced. Some items, such as settlement statements and records relating to occupancy arrangements, may not be available until or after closing. Similarly, during the escrow period, certain documents may be temporarily in the possession of the licensee or at a branch office location. However, brokers should keep track of such records.

Brokers' transaction files should contain the following records:  
**Accepted Offers & Sale Fails**

1. Transaction number (sequential).
2. Full names and addresses of buyer(s) and seller(s), with telephone and fax numbers.
3. Disclosed Dual Agency agreement (if applicable).