

REAL ESTATE BROKER STANDARD OPERATING PROCEDURES

Real Property Law 442-h(4)

- (a) Each real estate broker shall institute standardized operating procedures for the prerequisites prospective homebuyers must meet prior to receiving any services. Such standardized operating procedures shall include but not be limited to the following:
- (i) whether prospective clients shall show identification;
 - (ii) whether an exclusive broker agreement is required;
 - (iii) whether pre-approval for a mortgage loan is required; and
 - (iv) any other such standardized operating procedures as the secretary of state shall determine by regulation and upon notice and public hearing.

Real Property Law 442-h(4)

(b) Real estate brokers shall date stamp, notarize and post such standardized operating procedures on any publicly available website and mobile device application they maintain, shall make a copy of such procedures available to the public upon request at their office locations, and shall maintain a file of such standardized operating procedures while the broker's license is active. Any website or mobile device application maintained by a team or a real estate salesperson should also have the brokers' policies posted or have a direct link from such website or mobile device application to the brokers' website or mobile device application. If any alterations are made to the standardized operating procedures subsequent to such posting, real estate brokers shall date stamp, notarize and post such new standard operating procedures on any publicly available website or mobile device application they maintain within thirty days, and archive such alterations. Any broker or salesperson operating under a brokerage license that fails to adhere to such operating procedures shall be subject to the penalties imposed by section four hundred forty-one-c of this article.

(c) Any time a real estate broker is required to renew their license they must affirm to the department of state that they are in compliance with the requirements of this subdivision related to standardized operating procedures.

SOP

- Impacts:
 - Brokers
 - Associated Licensees
 - Teams

SOP

- All brokerages are impacted and must comply. There are no exemptions or carve outs for any type of brokerage. The DOS does not differentiate between brokers that practice exclusively in residential, commercial, leasing, referral or property management. As such, all brokers, associate brokers, salespersons and teams must be in compliance.

SOP

- (1) whether prospective clients shall show identification,
- (2) whether an exclusive broker agreement is required, and
- (3) whether pre-approval for a mortgage loan is required

SOP

- The law uses “prospective homebuyer” and “prospective clients”
- These terms should be defined the same referring to consumers that are buying a home:

SOP

- Every associated licensee and team must follow the broker SOP
- Associated licensees and teams are prohibited from having their own procedure

SOP

- Example:
 - Broker A SOP does not require an exclusive buyer broker agreement.
 - Salesperson Z with Broker A will not work with a buyer unless they have an exclusive buyer broker agreement
 - Salesperson Z is prohibited from:
 - requiring an exclusive buyer broker agreement
 - Refusing to work with a buyer that does not enter into an exclusive buyer broker agreement

SOP

- A broker may still offer an exclusive buyer broker agreement as an option but not a requirement.
- A broker may still suggest the benefits of a mortgage pre-approval but not require it

SOP

- If a broker requires one or more items and a prospective homebuyer refuses to provide the item(s) the broker may continue to provide services
- This must be consistent for all prospective homebuyers

SOP

- A seller may require a buyer to produce identification and mortgage pre-approval as a condition
- Brokers should notify clients that such items may be required

SOP

- Requires every brokerage to have a SOP
 - Date Stamped
 - Notarized
 - Hardcopy at office provide upon consumer request

SOP

- If amended must:
 - date stamp and notarize
 - replace hardcopy at office
 - post within 30 days
- Retain copies of all versions forever
- Broker required to affirm SOP upon license renewal

SOP

- Requires “clear and conspicuous” posting on all broker, associated licensee and team:
 - Websites
 - Applications
 - Social Media

Posting on Websites, Apps, Social Media

- The date stamped and notarized copy of the SOP's does not have to be posted to websites, apps and social media
- You may “cut and paste” the text of the SOP

Posting on Websites, Apps, Social Media

STANDARDIZED OPERATING PROCEDURE FOR PURCHASERS OF REAL ESTATE PURSUANT TO REAL PROPERTY LAW §442-H

[REDACTED] (the “Broker”) is making this Standardized Operating Procedure available on any publicly available website and mobile device application maintained by the Broker and any of its licensees and teams. Broker has copies of these Standardized Operating Procedures available to the public upon request at Broker’s office location.

Please be advised that Broker:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> Requires | <input type="checkbox"/> Does not require | 1. Prospective buyer clients to show identification* |
| <input checked="" type="checkbox"/> Requires | <input type="checkbox"/> Does not require | 2. Exclusive buyer broker agreements |
| <input checked="" type="checkbox"/> Requires | <input type="checkbox"/> Does not require | 3. Pre-approval for a mortgage loan / proof of funds* |

*Although Broker may not require such information, a seller of real estate may require this information prior to showing the property and/or as part of any purchase offer.

Posting to Social Media

- If traditional posting is not possible:
 - “Pinning” as first post with all required disclosures
 - Advertising regulations
 - Housing and Anti-Discrimination Notice
 - Broker SOP’s

SOP

- “As an alternative, the Department would permit...a clear, conspicuous and unambiguous link...to a separate page where all the required disclosures are made. For a link to be acceptable, it must clearly and conspicuously disclose the link’s purpose and cannot simply state “click here for more information”.

Open Houses

- As the listing agent, you must act in the best interest of your seller and owe them fiduciary duties. Those fiduciary duties require the listing agent to get the seller's permission before requiring any item from prospective homebuyers.

SOP

- As a best practice, brokers may want to consider creating a webpage with all required disclosures that associated licensees and teams can use for compliance

SOP-FAQ

- If a broker requires one or all of the items and a buyer refuses, can the broker still represent them?
- What if my policy has a caveat - for example, I require a pre-approval upon second time I take client out on showings ? Is this allowed and do I need to write this in my policy ?
- Do I need to post the notarized form on my website or just the language or whether the 3 items are required or not