

The 31 Violations Every Licensee must know...in Plain English!

Now that we know everything vital about earning a real estate license, we need to discuss how to keep your license in good standing.

It is extremely important for all real estate licensees to possess a complete and working knowledge of Alabama real estate license law and not just to you can pass the state exam!

When you become an active licensee, knowing the law will help you avoid and manage risks associated with the practice of real estate.

**The 31 Violations Every Licensee must know...in Plain English!**

There are **31 specific offenses** that can land a licensee into a lot of trouble!

The Commission or its staff can investigate a written, verified complaint by anyone against a licensee.

If the Commission suspects there is a legitimate reason for the complaint, referred to as “probable cause,” the complaint will be officially filed and a hearing into the matter will be conducted.

For the state exam, be sure to know the list of offenses and be able to identify each in a scenario-based question.

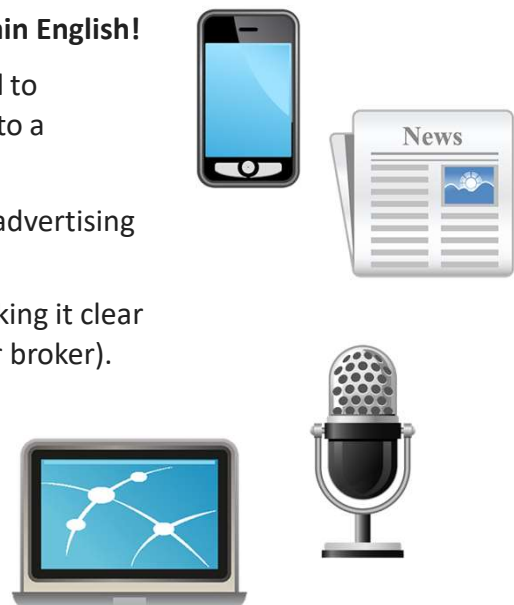


The 31 Violations Every Licensee must know...in Plain English!

- (1) Lying on a license application.
- (2) Not telling the other side when you, the licensee, own or are related to the owner (spouse, children or parents) when selling, buying, trading, or renting real property and trying to "bend the rules."
- (3) Not telling a potential buyer about a serious latent structural defect or any other defect that would be a health or safety issue that the licensee knows about.

**The 31 Violations Every Licensee must know...in Plain English!**

- (4) Lying (making of false promises) to an individual to influence, persuade, or induce them to enter into a contract or agreement.
- (5) Lying (making of false promises) in any form of advertising (print, TV, web, etc.).
- (6) Publishing ads (print, TV, web, etc.) without making it clear in the ad that you are a licensee (salesperson or broker).



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- (7) As an agent working for both sides of the deal without both sides knowing about it and doing so without a limited consensual dual agency agreement in place.

The 31 Violations Every Licensee must know...in Plain English!

- (8) a. For salespersons, failing to give your broker **trust funds** (such as earnest money or security deposits) as soon as possible or depositing trust funds into your own personal bank account, which is an example of **commingling**.
- b. For brokers, not putting trust funds in a federally insured bank in Alabama.
- c. For brokers, not keeping three years' worth of trust fund banking records on file.



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- (9) Placing a sign on any property offering it for sale, rent or lease without permission from the owner.
- (10) Failing to give clients or customers copies of any paperwork in a reasonable amount of time.

**The 31 Violations Every Licensee must know...in Plain English!**

- (11) Giving money to any individual or company that is not licensed.
- (12) Paying or receiving any kickback, bonus or referral fee from any person in a real estate transaction that is not licensed.



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- (13) Trying to get someone to break or get out of a current contract so that they will sign a new contract with you so that you will get paid (make a profit or commission).
- (14) If you are a salesperson or associate broker, accepting a commission or other valuable payment for a task that requires a license from any person other than your qualifying broker.

**The 31 Violations Every Licensee must know...in Plain English!**

- (15) Qualifying brokers or companies can get into trouble if they allow a salesperson or associate broker licensed under him or her to advertise himself as a real estate agent without the name or trade name of the qualifying broker or company appearing prominently on the advertising.

A salesperson can get into trouble if they do not include the name of their qualifying broker or brokerage on their ads.



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- (16) Bouncing a check with the Commission for payment of a fee or fine.
- (17) Working with or employing an unlicensed person who is expected to act like a licensee to get around the rules.

**The 31 Violations Every Licensee must know...in Plain English!**

- (18) Not telling an owner of a listed property that you have listed that you intend to buy the listed property or have a vested interest in it.
- (19) Ignoring rules of the Commission.



The 31 Violations Every Licensee must know...in Plain English!

- (20) Accepting a “net listing” for sale of real property.
- (21) Lying to a lender about the true terms of a sale of real estate.

**The 31 Violations Every Licensee must know...in Plain English!**

- (22) Not telling buyers or sellers they will be expected to pay certain closing costs and the approximate amount of those costs. In other words, not preparing a “net sheet.”

Licensees are required by law to prepare a net sheet with every offer and counteroffer.

A sample form titled "PURCHASER'S ESTIMATED CLOSING COSTS". It includes fields for: Purchaser's Name, Property Address, Type of loan (VA, FHA, USDA, Conventional, Cash), Closing Date, Interest Rate, Contract Price, Minus down payment (not earnest money), Loan sub-total, Plus: VA Funding Fee or FHA Up-front MI, Actual Loan Amount, Down Payment, Closing Costs, Closing costs from Lender Fee Sheet, Minus Seller Concessions, Estimated Closing Costs Total, Prepaid Expenses: Homeowner's Ins: Monthly Rate x 14, Mortgage Insurance, Conventional PMI: Monthly Rate x 3, FHA MIP: Monthly rate x 3, Property Taxes: Monthly Rate x 3, Daily Interest: (Actual Loan Amount x Interest Rate) / 365 days = Daily Rate x 15 days, Estimated Prepaid Expenses Total, Third Party Fees: Home Inspection Fee, Home Appraisal Fee, Wood Infestation Report (Termite Inspection), Home Warranty, Septic Inspection & Cleaning, Homeowner's Association Fee, Other, and Estimated Third Party Fees.

The 31 Violations Every Licensee must know...in Plain English!

- (23) a. Being found guilty of a felony or a crime of “moral turpitude,” which is a crime that reflects poor character such as shoplifting or writing a bad check.
- b. Having a final money judgment rendered against you which results from an act or omission occurring in the pursuit of his or her real estate business or involves the goodwill of an existing real estate business.

**The 31 Violations Every Licensee must know...in Plain English!**

- (24) Offering free lots or holding lotteries to get a deal from a buyer, seller or renter.
- (25) Not putting an expiration date on a written contract and/or not leaving copies of the contract with your client.



The 31 Violations Every Licensee must know...in Plain English!

- (26) Acting in a way that suggests “dishonest dealings, bad faith, or untrustworthiness.” In other words, being a “shady agent.”
- (27) Dropping the ball or being incompetent as a licensee. Since you are licensed, you are expected to know and do better than the average person.

**The 31 Violations Every Licensee must know...in Plain English!**

- (28) During an inspection by the Commission, failing to provide any paperwork or documentation (including books) they request.
- (29) During an inspection by the Commission, dragging your feet about answering a question or providing paperwork or documentation to the Commission.



The 31 Violations Every Licensee must know...in Plain English!

- (30) Not returning someone else's stuff such as paperwork, deeds, surveys, etc. You can't hold someone's stuff hostage for any reason.

**The 31 Violations Every Licensee must know...in Plain English!**

- (31) a. If a qualifying broker or company, not keeping copies of all contracts, leases, listings, and other records pertinent to real estate transactions for three years.
- b. If it looks like you or a brokerage is about to break any of these rules, the Commission, through the Attorney General, can act.
- c. The Commission may issue a cease and desist order to any unlicensed company engaged in activities requiring a license.



The 31 Violations Every Licensee must know...in Plain English!

- d. The Commission will notify the licensee and qualifying broker in writing regarding the complaint.
- e. The Commission will notify the licensee, and qualifying broker in writing of their decision about the complaint.



**This is the end of the current unit.
Please proceed to the next unit.**

When dealing with their own property

- (2) “Engaging in misrepresentation or dishonest or fraudulent acts when selling, buying, trading, or renting real property of his or her own or of a spouse or child or parent.”



When dealing with their own property

In other words, not telling the other side when you, the licensee, own or are related to the owner (spouse, children or parents) when selling, buying, trading, or renting real property.

Once an individual holds a license, he must completely obey Alabama real estate license law especially if he or his immediate family owns the property.

When dealing with his own property, a licensee cannot bend the rules to gain an advantage at the expense of the other side.



When dealing with their own property

According to former AREC General Counsel Charles Sowell's article "Risk Management 101: You and Your Real Estate," you'll see that this rule applies in multiple ways:

- When selling or renting an individual's own residential or commercial property or an immediate family member's residential property,
- When renting an individual's own apartments,
- When an individual is a builder or a member of the builder's immediate family and selling the newly constructed properties, or
- When an individual is a developer or a member of the developer's immediate family and selling lots being developed.
- **When dealing with their own property**

**When dealing with their own property**

Licensees must take care to realize that the Alabama real estate license law always applies to their transactions and they are expected to fully comply with the law at all times... especially when it is their own transaction!

For more information, read the full article:

https://arec.alabama.gov/arec/docs/newsletter/update/update_fall1998.pdf.

Although the article was written in 1998, the law and information is still relevant today.



Licensee's Interest in Listed Property

(18) Failing to disclose to an owner the licensee's intention to acquire, directly or indirectly, an interest in property which he or she or his or her associates have been employed to sell.

Many real estate licensees also buy and sell property for their personal use and gain.

According to the article "Buying a Property Listed by Your Company" by former General Counsel for AREC, Charles Sowell, if a licensee has interests in a property that is listed by his company, there are specific steps that he should follow to avoid any violations.



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- (8) a. For salespersons, failing to give your broker **trust funds** (such as earnest money or security deposits) as soon as possible or depositing trust funds into your own personal bank account, which is an example of **commingling**.
- b. For brokers, not putting trust funds in a federally insured bank in Alabama.
- c. For brokers, not keeping three years' worth of trust fund banking records on file.



Trust Funds

Trust funds are funds from parties in the contract that the licensee has been entrusted to keep safe until the completion of the contract.

Examples of trust funds include **earnest money checks** and **security deposits**.

Brokers are required to keep all trust funds safe in special bank accounts called **escrow accounts**.

Trust funds should never be mixed with the licensee's personal funds, which is called **commingling**.

Trust funds are other folks' money!



WHERE should trust funds such as earnest money or security deposits be held?

According to Alabama real estate license law:

- Trust funds must be deposited in a federally insured account in an Alabama bank.
- All records concerning these trust fund deposits must be kept for at least **3 years**.
- Trust funds may be held in a bank outside of Alabama as long it is stipulated in the contract.



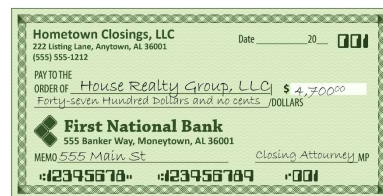
WHAT happens to trust funds when initially received?

- When given to a salesperson:**
The salesperson must give all trust funds received from clients or customers (such as earnest money or a security deposit) **immediately** to his qualifying broker. **A salesperson cannot hold trust funds. EVER.**
- When given to a qualifying broker:**
He will deposit and hold the trust funds in his escrow account. Based on the contract either the listing broker or the selling broker can hold the funds. It can also be held by another party (such as a closing attorney) as long as it is stipulated in the contract.

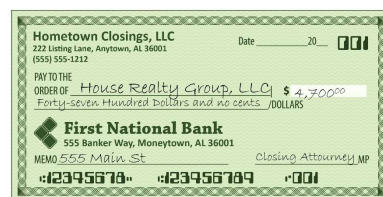


WHEN are trust funds deposited?

- **CASH** should be deposited immediately.
- **CHECKS** should be deposited either when...
 - The offer becomes a binding contract,*OR*
 - As instructed in the contract.

**WHAT happens to trust funds such as earnest money after closing?**

- The qualifying broker has **7 days** to disburse trust funds such as earnest money to appropriate parties after the closing date.
- In the real world it is typically disbursed at closing, but keep in mind that the law allows seven days.



WHAT if the transaction does not close?

- **If the parties agree on what should happen to the earnest money:**
 - The qualifying broker disburses earnest money as agreed upon by all parties involved.
 - Regardless of how the earnest money is to be disbursed, the decision must be documented in a separate written agreement that is signed by all parties involved.

**WHAT if the transaction does not close?**

- **If the parties disagree on what should happen to the earnest money:**
 - The qualifying broker may interplead with the court any funds that are the subject of disagreement between the parties.
 - “Interplead” means for the licensee to turn the matter over to the courts and let a judge decide what should be done.





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- b. For brokers, not putting trust funds in a federally insured bank in Alabama.
- c. For brokers, not keeping three years' worth of trust fund banking records on file.

**Commingling**

Commingling is the act of mixing your personal money with real estate funds (other folk's money) such as earnest money and security deposits.

Commingling is a huge "No-No!" and the Commission does not take this offense lightly!



Commingling

When investigating a commingling complaint, the Commission looks for additional elements of commingling other than just having personal funds or business funds in a trust account.

These elements may include excessive amounts of personal and business funds and expending personal funds from a trust account for personal or business expenses.

Examples of prosecuted cases include paying office utilities, personal or business credit cards, and paying auto and mortgage loans from a trust account.



Commingling

The broker must be able to properly account for all money belonging to others that is being held by the brokerage in the form of earnest money and security deposits.

To understand how commingling could occur, let's review how money is typically handled in a brokerage.



How money is handled in a brokerage?

Typically, every brokerage has a minimum of two bank accounts: an **escrow account** and an **operating account**.

The **escrow account** is used to hold all the trust funds associated with real estate transactions such as earnest money checks and security deposits.

Often the brokerage simply holds these funds until the closing occurs, which means the escrow account is holding other people's money, NOT the brokerage's money.



How money is handled in a brokerage?

The **operating account**, on the other hand, contains the money the brokerage has earned in the form of fees and commissions.

This money is used to pay the brokerage's bills such as rent, utilities, renewal fees and the like.



How money is handled in a brokerage?**The money in these two accounts should never be mixed!**

For example, if a broker is running a little short on funds and cannot pay his rent for the month, he absolutely cannot dip into the escrow account.

He also cannot deposit earnest money checks into his personal account with the idea of transferring the money to his escrow account later.

This simply is not allowed in any way, shape or form!



**This is the end of the current unit.
Please proceed to the next unit.**

Unearned Fees and Kickbacks

(12) Paying or receiving any rebate from any person in a real estate transaction.

Licensees and businesses cannot pay referrals fees to each other, BUT licensees can pay referrals fees to their clients (sellers, buyers and tenants) and other licensees.

Other than money paid for legitimately completed work, no compensation can be paid to or from a licensee to a non-licensee in the form of a “rebate.”

An **unearned fee, rebate or kickback** is any fee that is given or received when no legitimate services have actually been performed. It is basically “something for nothing.”



Unearned Fees and Kickbacks

Payments between two licensees and between a licensee and a legitimate client are allowed in certain situations.

When doing this, however, licensees should proceed with caution.

According to the article “Gifts, Rebates and Kickbacks” by former AREC General Counsel Charles Sowell, all incentives must be given “in advance or at closing and must be disclosed to all interested parties.”



Unearned Fees and Kickbacks

Furthermore, licensees must take care not to violate the federal **Real Estate Settlement Procedures Act (RESPA)**, *which prohibits kickbacks* in the real estate industry.

For the full article, visit the Commission's website:

https://arec.alabama.gov/arec/docs/newsletter/update/update_spring1997.pdf



Payments that are NOT allowed:

When a licensee pays or received a fee to or from a real estate services company, it is not considered a legal referral.

- **A licensee CANNOT ACCEPT** any type of payment/rebate/referral fee from real estate related companies such as title companies, lenders, surveyors, general contractors, property inspectors, etc.
- **A licensee CANNOT MAKE** a payment to any individual that has referred business in the form of a buyer, a seller or tenant to the licensee.
- **A rebate or kickback is illegal whether or not it is disclosed.** Disclosure of a rebate or kickback does not make it legal.



Examples of Illegal Fees:

Here are some examples of illegal fees which constitute a rebate and illegal kickbacks according to the article “Gifts, Rebates and Kickbacks” by former AREC General Counsel Charles Sowell:

- Payment of a fee to a licensee by a title insurance company, a mortgage company, or a homeowner’s insurance agent for referral of business.
- Giving a paid vacation to the licensee.
- Payment of a fee to a licensee by a painter, a pool contractor, or landscape contractor for referral of business.



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Examples of Illegal Fees:

- Payment of a fee by a licensee to anyone for referring a buyer or seller to the licensee.
- Payment of a fee by a title insurance company to an attorney or broker for referring business to the title insurance company.
- Payment of a fee by a mortgage originator to a real estate salesperson for referring business to the mortgage company.



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Payments that ARE allowed:

Some payment are allowed, but all incentives must be given in advance or at closing and must be disclosed to all interested parties.

Examples of "interested parties" would be the sellers, buyers and lender or guaranteeing government agency (FHA, VA or HUD) in the sale of real property (a house).

**Payments that ARE allowed:**

According to the article "Gifts, Rebates and Kickbacks" by former AREC General Counsel Charles Sowell, **the following referral fee payments are allowed:**

- Awarding prizes, money, gifts or other incentives to sellers or buyers in a transaction. Examples include:
 - Paying cash to a homeowner for a listing
 - Paying cash to a buyer to induce a deal
 - Giving appliances to a buyer or seller to induce a deal
- Paying inspection repair expenses to induce a buyer or seller to close on a deal.



Payments that ARE allowed:

- In property management, offering one month's free rent to induce an individual to rent a property.
- Referral fees paid to other licensees for the referral of business.
- A broker may legally earn a fee for originating a mortgage loan, provided the broker actually is the loan originator and does the work of a loan originator.
- A broker who also holds an insurance license may legally earn a commission for homeowner's insurance policy written on a property in a transaction.



**This is the end of the current unit.
Please proceed to the next unit.**

Estimated Closing Statements/Net Sheets

- (22) Failing to inform the buyer or seller at the time an offer is presented that they will be expected to pay certain closing costs and the approximate amount of those costs.

In other words, not preparing a NET SHEET!

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What is an Estimated Closing Statements?

Each time an offer or counteroffer is made or received for a single-family residential transaction, the licensee must provide to his client a breakdown of the closing costs in an **Estimated Closing Statement**, commonly called a **net sheet**.

A **net sheet** is an estimate of expenses, prepared specifically for the buyer or the seller, that includes the contract price, closing costs, any other costs involved such as existing mortgages and any profit that can be expected.

The purpose of the net sheet is to inform the client of his actual costs so there are no ugly surprises at the closing table. Failing to do so is a violation of Alabama real estate license law.

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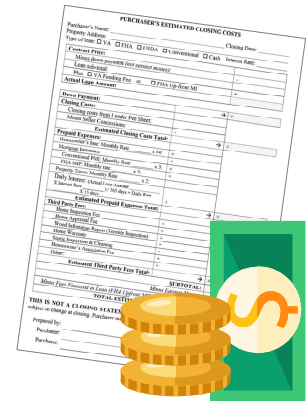
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Estimated Closing Statements/Net Sheets

- Each agent for the buyer and the seller must provide his client with a net sheet with each offer and counteroffer.
- The client must acknowledge receipt of the net sheet by signing it.
- The net sheet must be kept in the brokerage files for 3 years.

For more information about net sheets, check out the article “Estimated Closing Statements aka Net Sheets” by former General Counsel Chris Booth on the Commission’s website:

https://arec.alabama.gov/arec/docs/newsletter/update/update_summer2017.pdf



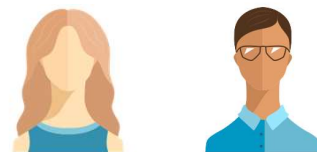
Listing Salesperson

Seller

Listed Price = \$215,000

The seller receives the offer of \$200,000.
Her agent prepare a net sheet at \$200,000.

The seller decides to counter with \$207,000.
Her agent prepare a new net sheet at \$207,000.



Buyer

Selling Salesperson

Buyer makes an offer of \$200,000.
Her agent prepares a net sheet to go along with the offer.

When the buyer receives the counteroffer of \$207,000, her agent will prepare a new net sheet using the \$207,000 price.

4 Net Sheets!



**This is the end of the current unit.
Please proceed to the next unit.**

Distributing Client Paperwork

(10) Failing to give clients or customers copies of any paperwork in a reasonable amount of time.



A licensee must promptly give his client copies of all paperwork that the client has signed.

Now, it doesn't matter that the client will most likely end up leaving the copies on the floorboard of his car. That isn't the licensee's concern.

The licensee just needs to make sure that as soon as the client signs anything that the licensee makes a photocopy of it and gives it to his client.

Breaking Contracts

(13) Inducing any party to a contract to break the contract for the purpose of substituting a new contract, where the substitution is motivated by the personal gain of the licensee.



For instance, many first-time homebuyers are renters and are under lease agreements.

Let's imagine Mr. and Mrs. Renter approach a licensee about buying their dream house, but still have nine months remaining on their current lease.

The licensee cannot encourage Mr. and Mrs. Renter to break their lease so that they can buy a house (and the agent can receive a commission!).

Licensee Compensations Other Than Commissions

- (14) A licensee cannot accept a commission or other valuable consideration for performing any act for which a license is required from any person except his or her qualifying broker.**

Simply put, any compensation that a licensee receives from a real estate transaction must come through his broker.

A licensee cannot directly receive compensation for a real estate related transaction from anyone except his broker.



Net Listings

- (20) If a broker, accepting a “net listing” agreement for sale of real property or any interest therein. A “net listing” is one that stipulates a net price to be received by the owner with the excess due to be received by the broker as his or her commission.**



You'll recall that a “net listing” is one that specifies that the owner will receive a specific amount of profit from the sale with the excess over that amount going to the broker as his commission.

Mortgage Fraud

(21) Misrepresenting or failing to disclose to any lender, guaranteeing agency or any other interested party, the true terms of a sale of real estate.

Fraud is the wrongful or criminal deception intended to result in financial or personal gain.

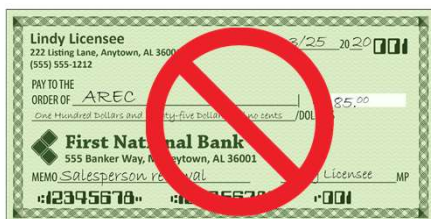
Real estate fraud can take many forms and offenses usually include some sort of false statement, misrepresentation, or deceitful conduct.

Some examples of real estate fraud include home equity fraud, home renovation scams, rental fraud, and deceptive timeshare scams.



Felonies or Crimes Involving Moral Turpitude

(23) Having entered a plea of guilty, OR having been found guilty of, or convicted of a felony, or a crime involving moral turpitude.



A **felony** is a crime for which a defendant may be sentenced to a year and a day or more of incarceration.

Examples of a crime involving moral turpitude include shoplifting and writing bad checks.

Speeding tickets are not crimes of moral turpitude and do not need to be reported to the Commission.

Offering Free Lots and Holding a Lottery

(24) Offering free lots or holding a lottery for the purpose of influencing a party to purchase or lease real estate.

According to Alabama real estate license law, builders cannot offer free lots as an incentive to build a home.

Also, licensees and builders cannot hold a lottery to give away items of value.

A lottery is considered a game of chance. If one must "enter to win," it's considered a lottery-type activity and is not allowed.



Contracts and Written Offers

(25) Failing to include a fixed date of expiration in a written listing agreement or failing to leave a copy of the agreement with the principal.



All listing contracts must have an expiration date AND cannot contain a provision for an automatic extension.

When the expiration date approaches, a licensee must complete a new services contract with his client.

Licensee should also take measures to explain this fact to their clients. Clients should not be under the impression that they are "locked" into a contract that will never expire.



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