**Teams**

**Broker Guide**

**Teams Overview – What is a Team?**

There are currently no laws or regulations directly governing teams in the Commonwealth of Virginia and there is no legal definition of a team in the Code of Virginia or Virginia Real Estate Board (VREB) Regulations. Generally, a team consists of a licensee and at least one other person who work together regularly under one brokerage firm; hold themselves out to the public as being one entity; and refer to themselves by a common name. Teams can take many forms including one agent with an administrative staff, two licensees working together, or many licensed and unlicensed individuals working under a top rainmaker agent. However, a team is always working under one principal broker.

**How are Teams Regulated?**

Team members are subject to the same laws, regulations, and professional standards as individual licensees. However, some neighboring states, like Maryland, do have -specific laws so you need to be careful if practicing across state lines to always check the other state’s laws and regulations. Individual brokerages can and do set their own rules and policies governing teams as well. Ultimately all teams and their members, licensed and unlicensed, are subject to broker supervision.

**Licensed Activities**

Because Teams are often composed of licensed and unlicensed members, it is very important for all team members to follow the VREB regulations on allowable licensed and unlicensed activities and for Brokers to ensure all team members are in compliance.

**Activities that require a real estate license include:**

* Showing Property
* Holding an Open House
* Answering questions on listings, title, financing, closing, contracts, brokerage agreements, and legal documents
* Discussing, explaining, interpreting, or negotiating a contract, listing, lease agreement, or property management agreement with anyone outside the firm
* Negotiating or agreeing to any commission, commission split, management fee, or referral fee

**Allowable activities for unlicensed members of the team include:**

* Performing general clerical duties, including answering phones, sending emails, and providing information shown on the listing
* Submitting listings and changes to MLS
* Following up on loan commitments after contracts have been ratified
* Having keys made for listings
* Computing commission checks
* Placing signs on properties
* Acting as a courier service
* Scheduling appointments
* Recording and depositing earnest money deposits, security deposits, and advance rents
* Preparing contract forms for approval of the licensee and supervising broker
* Preparing promotional materials and advertisements for approval of the licensee and supervising broker
* Assembling closing documents
* Obtaining required public information from governmental entities
* Monitoring license and personnel files
* Ordering routine repairs as directed by licensee
* Performing any other activities undertaken in the regular course of business for which a license is not required

Note that unlicensed individuals can be compensated only for their work at a predetermined rate that is not contingent upon the occurrence of a real estate transaction.

**Team Advertising**

Ultimately, teams are subject to the same advertising disclosure regulations as an individual licensee. The regulations require licensee names on licensee advertising. However, the regulations do not state whether a Team name may or may not also be used. There is a lot of confusion and ultimately disagreement surrounding the issue of whether a team can use its team name in advertising. Technically, in order to be a licensee you must have a salesperson license, or a business entity salesperson license (a “BES”) from the VREB. The regulations do not specifically state that a team must have a BES to advertise, but without it, licensee names of team members should be listed on the advertisement as well. In fact, many attorneys in the field recommend always listing your team name and all licensee names in your advertising. Teams should confirm their broker’s policies on advertising as well.

**Team Names**

The law states that the firm’s name must always be clearly and legibly displayed in all advertising. Teams need to be very careful not to mislead the consumer as to whether they are dealing with a team or a separate brokerage firm. To protect yourselves, Firms and licensees should be cautious when choosing team names and try to avoid the use of terms that might cause public confusion as to whether the Team is a separate brokerage, such as: realty, real estate, associates, partners, company, sales, limited, and properties. Use of the terms “team” or “group” is less risky. Some states are even making it a requirement that a “tying” term such as “at”, “with”, or “of” be used to tie the team to the brokerage firm. For example, “John Doe Group at Main Street Realty” makes it clear to consumers that they are dealing with a team at the brokerage firm of Main Street Realty. Virginia does not have such a regulation, but following the “tying” guideline will minimize the risk of consumer confusion.

**Teams and the Code of Ethics**

Code of Ethics Article 12:

REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations. REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional. (*Amended 1/08*)

Standard of Practice 12-9

Websites of REALTORS® and non-member licensees affiliated with a REALTOR® firm shall disclose the firm’s name and that REALTOR®’s or non-member licensee’s state(s) of licensure in a reasonable and readily apparent manner.

Standard of Practice 12-10

REALTORS®’ obligation to present a true picture in their advertising and representations to the public includes Internet content posted, and the URLs and domain names they use, and prohibits REALTORS® from . . . otherwise mislead[ing] consumers. (*Adopted 1/07, Amended 1/13*)

Under the Code of Ethics, team names and/or websites could create a less than true picture if there is confusion whether they are a part of a brokerage or operating independently, as if their own firm.

**Team Compensation**

Brokers may pay commissions to licensees only, whether individuals or entities. So, if agents form a team, but don’t create and license a business entity, the broker can only pay the licensees on the team individually. If the team decides to create a legal entity, such as an LLC or corporation, and obtains a business entity salesperson license through DPOR, the broker can then pay the entity and the business owners can distribute the payments to their team members.

**Teams and Agency**

The topic of agency is probably the most questioned, controversial, and risky element of working with or on a real estate team. If your firm allows dual and/or designated agency, and your team chooses to practice it, remember that the law requires that additional written disclosure of the agency relationship and its potential consequences be made to all parties prior to the commencement of the relationship. In order to move forward all parties must agree to the agency disclosure in writing.

If a team chooses to practice designated agency, there may be additional conflicts of interest that should be disclosed to clients as well. These potential conflicts will really depend on the organizational structure and size of your team. Brokers should work with their teams to analyze their specific conflicts of interest and to determine if additional disclosures would be in the client’s best interest. One example might be where the team leader is representing one party and a team member is representing the other as designated agents. It would likely be in the client’s best interest for the team member to disclose that she is negotiating against her team leader, who is, effectively, her boss.

There are some ways to lessen the risk of agency liability within teams. In addition to disclosing potential conflicts of interest, protecting client confidences is a real concern that must be addressed. Some best practices to ensure this include:

* Having buyer side and listing sides of the team work in different spaces instead of sharing an office
* If your team holds meetings, holding separate meetings for listing-side and buyer-side team members
* Limiting access to client files and information
* Training licensed and unlicensed team members on maintaining client confidences around the office
* And finally working with your broker to develop a written policy of your team’s intention to maintain client confidences, and how you plan to achieve that

**Questions and Answers**

1. **Is it true that the team name cannot be in larger print than the company name?**

*No, there is no such regulation. The bottom line is that all advertising – including team ads – must be clear and unambiguous as to the identity of the firm and that the team is a team, and not a brokerage.*

1. **How should teams disclose a brokerage relationship?**

*While the legislature has not addressed the use of “teams” in real estate transactions, we recommend that the names of all licensed members of a team that will be directly servicing that client be included in the Disclosure of Brokerage Relationship to Unrepresented Parties. Further, for dual or designated agency/representation, the agent’s name who is specifically assigned to the client should be inserted on the disclosure form.*

1. **An agent in my office want to put his team name and logo on apparel (like a jacket). Is he required to put the firm name on there as well?**

*For all licensee print advertising, the licensee is required to list the licensee name and the firm name. Yes, he would be required to have the firm name on the apparel as well.*

1. **I see signs all the time where the team name is the only name on the sign, they look like they are their own brokerage firm. Is this allowed?**

*The VREB regulations state that signs on the property must at least include the firm name and firm telephone number. Firm names must always be clearly and legibly displayed so that the public is not misled into believing the team is a separate brokerage firm.*