December 2017

HOT TOPIC ALERT

Real Estate Teams

"Great things in business are never done by one person. They are done by a team of people."
-Steve Jobs

The days of the solo real estate professional may be numbered. Real estate teams are rapidly growing in popularity. By one estimate, in 2016, there were between 35,000 and 50,000 real estate teams operating in the U.S. By 2019, there could be more than 100,000. Teams are popular as a way of sharing workloads and responsibilities, and as a way of profiting from the experience and knowledge of other professionals. The synergies of a well-functioning team are often a powerful incentive to relinquish some of the independence of a solo operator.

In recent years, the real estate team has begun to attract the attention of state regulators. As of November, 2016, twenty-four states have statutes or formal regulations in place that address real estate teams. In other states, regulators have issued statements regarding teams. While the level of regulation is still relatively low, there are still legal requirements that teams must follow.

WHAT IS A TEAM, AND WHY IS IT NOT A BROKERAGE?

Are you a "team player?" That is, do you work as a member of a real estate team? These days, it is more and more common for real estate licensees to hold themselves out as being a member of a team. Some even say that working with a real estate team has become the "norm."

If you're part of a team, what are you part of? The exact definition will vary from state-to-state. In fact, in many states, there is no official or legal definition of a team. When it has been defined by statute, as in

California or Oklahoma, "team" is defined as two or more real estate salespeople or licensees who work together to provide real estate services, or who hold themselves out to the public as a member of a team. One team member is designated as the team leader. The team is usually identified by a team name. Some states allow non-licensees to be a part of the team, but only if their work is limited to real estate-related work that can be done by an unlicensed person. In some states, team advertising may not include unlicensed team members. The team is not a free-standing business, but it is a part of a real estate brokerage or company. As a general rule, all of the team members must work for the same brokerage. Team members, however they may structure the team and present themselves, are still part of a brokerage. State law often requires that teams operate out of the main office or a branch office of the brokerage with which they are affiliated.

The relationship with a brokerage is crucial. When a buyer or seller is represented by a team, the agency relationship created is with the brokerage. The team is not an independent entity, and the members of the team are working for the brokerage, so there can be no agency relationship created solely with the team. Dual agency with members of the same team may be allowed, provided both parties consent.

Teams offer many advantages for real estate licensees. Team members can take advantage of the opportunity to learn from those with more experience, and can gain the satisfaction of helping someone who is relatively new to the business become successful. With multiple members providing coverage, there is less chance of missing that promising lead that would otherwise be lost (imagine a vacation without that worry!). There are also greater possibilities for team members to specialize in the parts of the transactions where they work the best—one member may work best with sellers, while another has the best success with prospective buyers. Team members also benefit from sharing overhead, such as office and marketing expenses and MLS fees.

Of course, there are downsides to being a part of a team. Many people just prefer to work alone, and be accountable only for themselves. They may also like the freedom and flexibility that comes with operating solo. Finally, teams are only as strong as their weakest members. One member's slipshod or unprofessional performance can bring the whole team down.

Real estate teams may or may not be the "norm." Regardless, they are an important part of the real estate business today.

PUTTING IT ALL TOGETHER—HOW IS A TEAM ORGANIZED?

The word "team" implies that there is some kind of organization or structure to the group. Holding oneself out as part of a team suggests that there has been at least some kind of agreement to work together and be identified as a "team." Without some kind of structure, members of a team could end up working alongside, rather than with, other team members. The advantages of having a team in the first place are never realized.

Without outside regulation or limitations, teams, like any group of individuals, tend to follow certain patterns of organization and behavior. Group dynamics is the scientific study of this organization and behavior, and there has been a great deal of scholarly writing on the subject. As a practical matter, you probably can identify different types of teams from your own observations. Tom Ferry, the CEO of a training company for real estate professionals, says that there are four different types of teams:

- The "illegitimate team," a group of salespeople working together without back-end support staff;
- The "family team," the largest segment of real estate teams, made up of spouses and other family members working together;

- The "hero with minions team," one high-performing individual who has trouble keeping people on his team and who has trouble giving up responsibility to others; and

- The "team builder" team, in which team members are brought on board to fulfill certain tasks based on their unique skill sets.

While teams may tend to follow certain patterns of behavior on their own, the legal rules are not defined as clearly. In many states, the laws or regulations on teams do not address the organization or operation of teams. The "team" designation is regarded largely or even solely as a matter of advertising (see below). In other states, the laws on real estate teams give some guidance on how a team must be organized, but for the most part, it is up to the team to decide on a structure.

As noted above, teams must be part of an existing brokerage. Teams must also be made up entirely of people affiliated with that brokerage. In some states, a team may be organized as a "separate company within a company." The team/company might be required to register with the state real estate commission, even though the company is a part of another licensed company (note that not every state would allow such an arrangement). Depending on the state, the team may be required to register its name.

The state laws regarding real estate teams that address team organization typically require that one team member be designated as the leader. The leader is the contact person for the team. She/he is not necessarily responsible for supervising the work of the other team members. In fact, state law may prohibit the delegation of supervisory responsibilities to a team leader. Instead, the overall responsibility rests with the supervising broker, or the broker who is in charge of the brokerage. The team leader's role may be limited to some administrative duties, such as keeping a list of the members of the team and providing that list to the supervising broker.

Currently, team organization is left almost entirely to the team and the brokerage the team works for. Regulators stay away from the internal operation of teams (in fact, the Louisiana Real Estate Commission is very clear that it will not "intervene or become otherwise involved in team or group disputes . . . . Such disputes shall be settled by the respective parties or by a court of competent jurisdiction."). There does not seem to be any particular impetus to change this situation. Instead, teams will likely continue to operate as they do now, under the supervision of an existing brokerage.

WHAT IS A JOINT VENTURE?

Imagine this scenario, Resurgent City is growing again. After years of decline from its heyday as a steel-making center, the city is reinventing itself as a technology hub. Olivia, a real estate broker, wants to cash in on this new growth. She makes an agreement with her cousin Jaxson to find abandoned industrial properties. Jaxson, a contractor, will rehabilitate the buildings and turn them into work or living spaces. Olivia will market them through her brokerage.

Jaxson and Olivia are members of a joint venture. In a joint venture, two or more parties combine their resources to accomplish a particular task. The participants agree to share in the profits and losses from the venture, but any other businesses are separate. Joint ventures are not permanent or indefinite relationships. They are focused on the one task they are set up to do.

Joint ventures can be an excellent way of sharing expertise in a new or unfamiliar field, and using your own expertise at the same time. There is also the advantage of some continuity in the operations. In the example above, if Olivia had not entered into her deal with Jaxson, she certainly could have found some contractors in the city to work for her. The joint venture agreement, however, gives her a regular provider of contracting services without the need to solicit bids, evaluate services, etc., each time there is a new property. Similarly, Jaxson is working with someone who knows the real estate market, and who can work in that market to their mutual advantage.

Joint ventures are not the same as real estate teams. A real estate team is a group of two or more real estate licensees who work together to provide real estate services. They are engaged in some continuing enterprise that is not limited to a single project or series of projects. Team members all work through the same brokerage, and they present themselves to the public as being part of a team. However, the membership of a joint venture, may be made up of anyone who provides services or expertise.

A common form of joint ventures in many real estate offices has been the in-house loan service, or marketing service agreement. Marketing service agreements are, in essence, joint ventures involving a real estate brokerage and a mortgage company. The brokerage provides the mortgage company with office space, and the mortgage company agrees to use the space to service clients of the brokerage.

The marketing service agreement type of joint venture has become less common, due mostly to the legal risks involved. While the Real Estate Settlement Procedures Act (RESPA) prohibits payments for referrals of real estate settlement services, there is an exception that allows payments for services between settlement service providers so long as the payments are for the fair market value of the service provided. The Department of Housing and Urban Development had provided guidance on how to structure these arrangements to comply with RESPA. In 2010, the Dodd-Frank law to protect consumers moved the authority to enforce RESPA to the Consumer Finance Protection Board (CFPB). The CFPB has taken a harder line toward marketing service agreements, but has declined to issue regulations. The CFPB is, instead, enforcing the rules on a case-by-case basis.

The RESPA regulations do not, of course, apply to other types of services, such as relocation companies or contractors. A joint venture could be a creative, innovative marketing tool for you to explore.

GETTING NOTICED—HOW DOES A TEAM ADVERTISE ITSELF?

Most of the state law and regulation relating to real estate teams deals with team advertising. As with all advertising regulation, the purpose of regulating team advertising is the protection of the consumer. Regulators are concerned that consumers may be misled into thinking that a team is a brokerage. Consumers should know whom they will really be dealing with, and who bears the responsibility for the work. A contrary argument is that the regulation of team advertising places an "inordinate emphasis" on the brokerage, and not on the individual agent handling the transaction. According to this argument, identification of the brokerage only diminishes competition among individual agents by making their identities less apparent to the consumer.

The advertising requirements for real estate teams differ from state-to-state, but there are features that are common to most laws. In virtually every state, real estate team advertising must include the name of the brokerage the team is affiliated with. The brokerage name must be conspicuously displayed. Some states require that the brokerage name be displayed more prominently than the team name, while others state that the brokerage name must receive "equal prominence" with the team name. The New Mexico Real Estate Commission is specific in its requirements, and says that the brokerage trade name and telephone number must be "prominently displayed in a type size not less than thirty-three percent of the type size of . . . the team name." In New Jersey, a team website must include a link to the brokerage website, or must display the brokerage telephone number. If the team website has links to the brokerage website, there must be a clear indication of how to link to the broker. That information must be as large as the "predominant size wording" on the team website. The Idaho Real Estate Commission has issued a guideline that says that advertising a team name is not sufficient to meet the requirement that advertising include the licensed name of the brokerage.

The name that may be used by a team is also regulated in many states. Use of "the terms 'realty', 'real estate', 'REALTORS® ', or similar terms suggesting a brokerage" in a team name is often prohibited. There may be a requirement that the name of the team include the name of at least one licensee member of the team. California law requires that team name include the name as well as the license number of at least one of the licensed members of the team "in a conspicuous and prominent manner." Team names in Colorado may not imply that the team is an entity separate from the brokerage firm "from which the team brokers are licensed.

Many states do not have rules that mention team advertising explicitly. Licensees in those states who want to hold themselves out as a team must still remain mindful of their state's general advertising laws and regulations. For example, the laws and regulations relating to real estate licensees in Georgia do not mention teams. The regulations of the Georgia Real Estate Commission require, however, that all "advertising by associate brokers, salespersons, and community association managers must be under the direct supervision of their broker and in the name of their firm." Wyoming law (Wyo. Stat. § 33-28-119) says that the every real estate licensee who advertises "shall use the real estate company name under which he is licensed."

For regulators, the main concern is that the public is not misinformed about whom they are dealing with in a real estate transaction. Remember that the advertising requirements in every state will vary. Before advertising as a team, it is important that you learn what the rules are in your state. If you aren't sure, or if there is some doubt about those requirements, it may make sense to contact your state's real estate commission to see if they can offer you any guidance. Find the rules now; avoid problems later.

CONCLUSION

Real estate teams are a fixture of the contemporary real estate scene. It seems reasonable to assume that they will continue to be a fixture in the future. Teams offer many attractive features for both licensees and their customers.

It is also reasonable to assume that real estate regulators will continue to be interested in teams. The regulation may continue to be relatively minimal, limited largely to advertising rules. On the other hand, as teams continue to develop and as the practice continues to evolve, it is possible that more extensive regulations will also develop and evolve. ■

Hot Topic Alerts are prepared for NAR by Legal Research Center, Inc.

Questions or concerns contact Adriann Murawski
Email: amurawski@realtors.org
Phone: 202-383-1068

ADDITIONAL STATE & LOCAL RESOURCES

State Issues Tracker: Database with over thirty real estate related issues and state laws. Examples include: Transfer Taxes, Seller Disclosures, Broker Lien Laws, Foreclosure Procedures, Sales Tax on Services, Licensing Requirements & Maintenance, etc.

White Papers: Comprehensive reports prepared for NAR on issues directly impacting the real estate industry. Examples include: Rental Restrictions, Land Banks, Sales Tax on Services, State & Local Taxation, Building Codes, Hydraulic Fracturing, Foreclosure Property Maintenance, Climate Change, Private Transfer Fees.

Growth Management Fact Book: Analysis of issues related to land use and modern growth management topics include: density— rate of growth, public facilities and infrastructure, protection of natural resources, preservation of community character, and affordable housing.

All available on REALTORParty.com