

August 2021

## HOT TOPIC ALERT

### Real Estate Teams



The real estate profession continues to evolve as real estate professionals retool the way they operate and conduct business. Teams are a part of that evolution. According to a [2018 NAR survey](#), 26% of the membership was part of a real estate team. That number is likely to continue to rise. The use of a team model is a popular 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.

#### WHAT EXACTLY IS A REAL ESTATE TEAM?

A “team” is not an informal or casual designation of co-workers, or people who happen to share the same office. In reality, the use, designation, or operation of a business as a real estate “team” is subject to significant rules and regulations. When it has been defined by statute, as in [California](#) or [Oklahoma](#), a “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. Similarly, the definition has been codified into state regulations, such as in [Virginia](#), where a “team” is defined as “two or more individuals, one or more of whom is a real estate salesperson or broker, who (i) work together as a unit within the same brokerage firm, (ii) represent themselves to the public as working together as one unit, and (iii) designate themselves by a fictitious name.” In some states, like Missouri, 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).

The core of a team is the two or more licensed real estate professionals who engage in the real estate transactions. Of course, the real estate business is not limited to jobs done by licensed or sanctioned professionals. There are many non-licensed personnel, such as assistants and support personnel, who are essential. Many states do allow non-licensees to be designated as an official part of the team, but only if their work is limited to real estate-related work that can be done by an unlicensed person. The success of a real estate team is not just dependent on its licensed members, but also relies on support personnel, such as these unlicensed assistants, to perform a host of functions that run the gamut from document assembly, bookkeeping, answering phone calls, to coordinating appointments and much more.

Importantly, caution must be exercised when assigning duties and responsibilities to unlicensed assistants. Unlicensed assistants are forbidden, in many instances, from performing activities that cross into the roles of the team’s salespeople or licensed members. Some prohibited activities might include showing properties, commission negotiations, answering questions regarding listings, or negotiating offers. [Statutes, rules, and regulations](#) for unlicensed assistants vary from state to state, so a review of the applicable local rules is necessary to ensure proper compliance.

### **WHY THE BROKERAGE CONNECTION?**

A team usually is oriented around a highly successful salesperson who operates within a brokerage. As mentioned, the team is composed of two or more real estate salespeople who may pool resources on marketing, administrative staff, and offer specialists for various aspects of the real estate business.

Importantly, a team is not a stand-alone business, but must be 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. For example, according to the [Maryland Real Estate Commission](#), real estate “team members must conduct all real estate brokerage activities from the broker's office or the branch office where their licenses are displayed.” And that “a team may **NOT** operate out of an

office or location other than the broker's office or the branch office where their licenses are displayed.”

The relationship with a brokerage is a critical component of team formation. 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. Operationally speaking, brokers have certain obligations to make sure the teams recognize when dual agency disclosures need to be made and also to make sure that the sales professionals understand the confidential information that can't be shared with the other clients. The [Maryland Real Estate Commission](#) also addresses real estate team dual agency requirements mandating that “[t]he Broker may designate two members of a team as intra-company agents for the Buyer and the Seller in the same transaction if the parties have **FIRST** been advised in writing that the Licensees are part of the same team and the team could have a financial interest in the outcome of the transaction. The Buyer and Seller must complete the ["Notification for Dual Agency within Team" form](#) required under existing law before Dual Agency may occur.” As an option, brokers could consider restricting clients to a specific team member in order to avoid any undisclosed dual agency allegations. Some [states](#), however, prohibit dual agency, so a review of your jurisdictions dual agency rules is imperative.

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.

### **WHY ARE TEAMS BECOMING MORE AND MORE POPULAR?**

Many real estate teams have found that the [upsides of the team model outweigh some of the downsides](#). On the upside, although forming or joining a team is not for everyone, they are a great alternative for someone looking to jump start their career and become a successful real estate agent more quickly. Teams provide [leads, structure, support, and training](#). Another purpose of a real estate team is to improve the overall level of service provided to their clientele. A team can accomplish this by leveraging the right people as specialists to perform the various business functions needed to efficiently operate. In one team scenario, one agent might oversee client phone calls related to listings while another team member might escort clients on home tours or host an open house. Another might draft purchase offers, coordinate the loan process, or attend home inspections.

Teams have become more inviting because of the prospect of potentially more steady income. With the ebb and flow of income, team structure and consolidated lead

generating efforts, teams are more likely to have more consistent business which usually equates to a more consistent income despite any adjusted commission split. Ultimately, client satisfaction tends to lead to more referrals. With the team model, clients can reach out to any other team member for help if you or another particular agent is not available.

Real estate licensees can enjoy other benefits of joining or forming a team. 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. . 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. With the volatility of the real estate market, being part of a team can provide a degree of risk mitigation. Individual agents are wholly dependent on their own performance to foot their bills. Finally, teams may offer agents or brokers [the ability to diversify the various services they can offer](#) their clients. An agent who works in single-family residential sales who has leads in other sectors can bring in a specialist or agent who handles transactions in that sector.

Being a part of a real estate team does have some downsides too. Some individuals prefer to work alone and be accountable only for themselves. They tend to like the freedom and flexibility that comes with operating solo. Sometimes forming an effective team means finding the right members that “fit” with the team as teams are only as strong as their weakest members. One member’s poor or unprofessional performance can wreak havoc on a team’s success. Also, working with other colleagues means disagreements or interpersonal issues can arise. Sometimes working through those issues can be difficult and can often compromise your experience. Compensation arrangements can also vary. Although on some teams the compensation may be steady, it will most likely be lower than you could potentially earn on your own. A licensee should balance this factor against the idea that the more there is team longevity, the more volume the team can potentially generate, which eventually makes up for the reduced commissions.

### **THE PIECES TO THE PUZZLE: HOW IS A TEAM ORGANIZED?**

Although described as a “team,” a group of individuals still needs a degree of structure and organization to function effectively. 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. According to [Tom Ferry](#), a seasoned real estate educator, there tends to be four different types of team modeled organizations in real estate. They are:

- 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, but without clearly defined roles;
- 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 and that the team IS the vehicle to success.

The real estate team model does have restrictions. As mentioned, teams must be part of an existing brokerage, and they do not operate independently. Even with a successful team leader, the team must be associated with a broker. There is usually a founder of the team. This is the person who is in charge of hiring and firing, setting team direction and strategy, and ultimately holding each of the team members accountable to their responsibilities, as well as coaching them towards their goals.

Some real estate team scenarios—like two agents who might both share the same level of experience and seniority in the industry—may not necessarily have a defined team lead. Just as in any partnership, however, the team members lean on the strengths of each other. This usually leads to team members growing or gaining expertise on particular aspects of the business (e.g., maybe one agent leads the referral generation effort while another takes control of the lead nurturing tasks).

In most scenarios, however, a team usually has a leader. A great team leader is experienced, knowledgeable, and trusted in the industry by their teammates and colleagues. A desired leader is one who sets strategy and direction for the team; they can find quality agents to hire and train as well as help maintain a level of accountability amongst team members. A team leader needs to be able to delegate responsibility, train those who work with and for them, and be a driver of positive culture so that their team members stay engaged and motivated to perform. A respected leader has the ability to coach and mentor members to obtain goals.

### **WHAT’S IN A NAME?**

Depending on the state, a real estate team may be required to register its name. [Connecticut](#), for example, [has a newly enacted law](#), effective January 2022, that requires teams to register with the state as well as to pay annual registration renewal fees. Not only does the statute impose registration requirements, but also restricts name usage. Registered real estate teams are also required to use the full name of one of their team members or the full name of their affiliated brokerage. They can use the word team in their name, but cannot use any term that might confuse a consumer into believing the business is a brokerage, such as LLC, company, or group.

Although not going as far as Connecticut in enacting formal legislation, in 2019, [the Florida Real Estate Commission \(FREC\)](#) imposed similar guidelines on Florida teams.

The Florida rules include the requirements that teams “perform licensed activities under the supervision of the same broker or brokerage,” that teams “file with the broker a designated licensee to be responsible for ensuring that the advertising is in compliance” with Florida Statutes and the Florida Administrative Code, that “[a]t least once monthly, the registered broker must maintain a current written record of each team’s or group’s members,” that real estate “team or group names may include the word “team” or “group” as part of the name.” The rules also provide that real estate team or group names “shall not include the following words: (a) Agency (b) Associates (c) Brokerage (d) Brokers (e) Company (f) Corporation (g) Corp. (h) Inc. (i) LLC (j) LP, LLP or Partnership (k) Properties (l) Property (m) Real Estate (n) Realty (o) Or similar words suggesting the team or group is a separate real estate brokerage or company,” and that in advertisements containing the team or group name, “the team or group name shall not be in larger print than the name of the registered brokerage”. Finally, “[a]ll advertising must be in a manner in which reasonable persons would know they are dealing with a team or group.”

### **WHAT IS A JOINT VENTURE VS. A TEAM?**

In a [joint venture](#), two or more parties combine their resources to accomplish a real estate project. 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.

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](#) (MSA) 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. But, in 2010, the Dodd-Frank law to protect consumers moved the authority to enforce RESPA to the Consumer Finance Protection

Board (CFPB). In 2020, the [CFPB released a series of Frequently Asked Questions \(“FAQs”\)](#) formulated to address Section 8 of RESPA, as well as to answer specific questions regarding the permissibility of gifts, promotional activities, and marketing services agreements (“MSAs”).

Although the CFPB tried to provide some guidance in 2015 with regards to MSAs, the CFPB determined that its Compliance Bulletin 2015-05, regarding RESPA Compliance and MSAs, did “not provide the regulatory clarity needed on how to comply with RESPA and Regulation X” and [therefore rescinded it](#). The CFPB noted however, that “the rescission of the Bulletin does not mean that MSAs are per se or presumptively legal.” The CFPB released a compliance aid in the form of Frequently Asked Questions (FAQs), to address compliance issues relating to RESPA and certain provisions of Regulation X.

Pertaining to MSA’s, the [CFPB notes](#) that a lawful MSA “is an agreement for the performance of marketing services where the payments under the MSA are reasonably related to the value of services actually performed.” With regards to payments under an MSA, “when a person performing settlement services receives payment for performing marketing services as part of a real estate transaction, the marketing services must be *actual, necessary, and distinct* from the primary services performed by the person. These marketing services *cannot* be nominal, and the payments *cannot be for a duplicative charge or referrals*.” (emphasis added). The CFPB also notes “MSAs can be unlawful when entered into based on their structure or can become unlawful based on how they are implemented.” The CFPB goes on to cite several prohibited agreements, including:

- An agreement to pay for referrals.
- An agreement to pay for marketing services, but the payment is in excess of the reasonable market value for the services performed.
- An agreement to pay for marketing services, but either as structured or when implemented, the services are not actually performed, the services are nominal, or the payments are duplicative.
- An agreement designed or implemented in a way to disguise the payment for kickbacks or split charges.

The RESPA regulations do not apply to other types of services, such as relocation companies or contractors.

### **GETTING THE WORD OUT: HOW CAN TEAMS ADVERTISE?**

Many of the laws and regulations pertaining to real estate teams are related to their marketing and advertising practices. Regulators target team advertising because [regulators believe](#) that teams do not always identify the brokerage that they are affiliated with and tend to give consumers the impression that the team is a brokerage firm. States have been enhancing existing licensing laws to rectify this problem in order to assure the broker’s name is prominently displayed in all team marketing and advertising materials. Advertising regulations have not come without resistance. A [contrary argument made by](#)

[individual agents](#) 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.

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, like [Minnesota](#), require that the brokerage name be displayed more prominently than the team name, while other states, such as [Ohio](#), mandate 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, as it is in [South Carolina](#). There may be a requirement that the name of the team include the name of at least one licensed member of the team. [California](#) requires that team names 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](#) says that every real estate licensee who advertises “shall use the real estate company name under which he is licensed.”

In late 2020, [New York State](#) amended the state’s [real estate advertising regulations](#). The regulations, among other provisions, update regulations as they relate to “team names” and “team websites.” [Section §175.25\(3\)](#) of the regulations specifically applies to real estate teams. In New York, team names must “include the full licensed name of the real estate brokers, associate brokers or real estate salespersons who are part of said team.”



Alternatively, “if the names are not included, the team name must be immediately followed by "at/of ." Team names shall use the term "team." The use of any other terms besides "team," such as "associate," "realty" or "group" is prohibited. The use of the name of a non-licensed individual in a team name is prohibited.” If the use of the name of unlicensed team members in advertisements is contemplated, then “the advertisement must clearly and conspicuously state which individuals are real estate licensees and which ones are not.” For regulators, the main concern is that the public is not misinformed about whom they are dealing with in a real estate transaction. The advertising requirements in every state will vary. Before advertising as a team, licensees must learn what the rules are in their state.

NAR has continued to study this trend and has noted that teams are becoming more common in the real estate industry as an increasing number of Realtors® consider themselves a member of a real estate team. “The transformation of the real estate landscape continues to change the way Realtors® do business. . . . Realtors® have continued to embrace changing technology and business tactics that are modernizing the industry. Real estate teams are an increasingly popular business model in response to consumer demand for a wide range of specialties from their Realtor® as they expect constant support throughout the real estate transaction,” according to NAR CEO [Bob Goldberg](#).

As teams and usage continues to increase, it is important to recognize that real estate teams will attract the attention of real estate regulators. More recently, 24 states now have statutes or formal regulations in place that pertain to real estate teams. As of today, these regulations continue to be relatively minimal, limited largely to advertising rules. However, as teams continue to develop and as the practice continues to evolve, it is anticipated that more extensive regulations could also develop and evolve.

## **CONCLUSION**

Real estate teams are still experiencing steady growth and likely will continue on this trajectory into the foreseeable future. They will remain a fixture of the contemporary real estate scene. Teams offer many attractive features for both licensees and their customers. Real estate professionals must continue to monitor and stay abreast of new or amended regulations that deal with real estate teams.

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Questions or concerns contact Melissa Horn  
Email: [MHorn@nar.realtor](mailto:MHorn@nar.realtor)  
Phone: 202-383-1026

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