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MEMORANDUM

TO: Gary Clayton
FROM: Stephen J. Bochenek
DATE: January 24, 2001
SUBJECT: Managing Broker for More Than One Entity

This past year the Office of Banks and Real Estate (“OBRE”) adopted an interpretation that the Illinois Real Estate License Act of 2000 would not permit a licensee to be a managing broker for more than one sponsoring broker. This constituted a change in OBRE’s interpretation with regard to this particular question. To the best of my knowledge, approximately 10 to 12 years ago OBRE first adopted an interpretation which allowed a licensee to be a managing broker of more than one sponsoring broker. Apparently, OBRE established guidelines that in order to act as a managing broker for more than one sponsoring broker, the sponsoring brokers had to be located at the same address or location.

I am not certain what statutory authority OBRE, or its predecessor relied on in adopting this interpretation. In fact, on more than one occasion I have indicated to members or AE’s that OBRE was apparently allowing such a situation to occur but that I was uncertain of the statutory authority for that interpretation. This past year, after the enactment of the Illinois Real Estate License Act of 2000, OBRE sent notice to sponsoring brokers indicating that its interpretation had changed on this matter. Specifically, OBRE indicated that a licensee could not be a managing broker for more than one sponsoring broker.

It is my opinion that the Illinois Real Estate License Act of 2000 (“Act”) is clear that a licensee cannot be a managing broker for more than one sponsoring broker. For example, Section 10-20 of the Act indicates that, “A licensee must have only one sponsoring broker at any one time.” Section 10-20 goes on to provide that, “Every broker who employs licensees or who has an independent contractor relationship with a licensee shall have a written employment agreement with each such licensee. The broker having this written employment agreement with the licensee must be that licensee’s sponsoring broker.” By definition, the managing broker must be a licensee and must be sponsored since if a licensee is not sponsored, their license becomes inoperative. The definitions of “managing broker” and “inoperative” in Section 1-10 of the Act provide support for this position. It is my understanding that OBRE believes the current Act provides

clearer direction on this issue and that this is the reason that OBRE has modified its interpretation with regard to this issue.

It is my opinion that the rationale or policy behind this requirement is so that OBRE has a clear and accurate understanding of whom a licensee is representing at any particular point in time. This is not only true for OBRE, but also for the public and, perhaps sometimes, even the managing broker. The issues that could potentially arise if you had a managing broker for more than one sponsoring broker would be issues of discipline and whose license should be disciplined for the actions of the managing broker. This would particularly be the case if OBRE wanted to discipline the license of the sponsoring broker, as well as the license of the managing broker, for the actions of the managing broker. Other issues might arise concerning access to escrow accounts in multiple companies, access to information from more than one company and misunderstanding by the public or a vendor as to which entity the managing broker was representing.

One practical way for our members to deal with this interpretation is for a sponsoring broker to establish separate divisions, although not separate entities, under one company. Each of these divisions might be doing business under a separate assumed name. In this manner, one managing broker could be involved with several different divisions of one sponsoring broker. If the company properly established assumed names for each division, the sponsoring broker could advertise its different properties or different divisions only under their assumed name. This would not be misleading to the public because it would be easy enough to identify who the sponsoring broker was by merely checking with the corporate records of the Secretary of State (if a corporation is involved) in order to determine who is the parent company behind these divisions. Further, this information would be on file with OBRE.

I hope this memorandum has been responsive to your request. If you have any additional questions or would like to discuss these issues further, please feel free to give me a call.

Below you will find one broker's scenario with the above addressed issue.

From the desk of:

Josh Dean
Broker
RealStar Realty
Naperville, IL 60563

Joshua Dean <joshuardean@yahoo.com> 5/25/2004 >12:45:30 PM wrote:

Hello Ms. Benden,

Attached you will find our proposal for introducing real estate kiosks to the Chicago land market. As I mentioned on my voice mail to you earlier today, Mike Garvin had requested that we send you our

proposal to help ensure that our plan did not violate any licensing laws. Based on our research and interpretation of The Act, we believe that our kiosks would not violate the Acts provisions. However, we certainly want to make sure that we will not run into problems down the road and would kindly request the support of your office to help us determine full compliance with the Act and to remedy any compliance issue that we may have. We would appreciate your feedback, questions, and opinions on this matter.

You can always reach me direct by cell phone or email at the numbers listed below. I thank both you and Mike in advance for your assistance.

Sincerely,
Josh Dean
Broker
RealStar Realty
Naperville, IL 60563
630-707-0567 (Cell)
JoshuaRDean@yahoo.com

ATTACHMENT:

Mary-Ann Benden
Director of Enforcement
Office of Banks & Real Estate

RE: Compliance of Real Estate Kiosks with Licensing Laws

Dear Ms. Benden,

My name is Josh Dean and I am a real estate Broker with RealStar Realty in Naperville. Aside from being a Broker with RealStar Realty, I am also the President of InVision Ideas & Development, a marketing and development company that is currently developing a product for the local real estate market that will: 1.) help build a stronger relationship between home buyers and sellers and local REALTORS, 2.) will increase recognition of REALTORS in their local market, 3.) will create a larger and more recognized real estate network, and 4.) will help create a more informed real estate consumer.

On two occasions I have spoken with Mike Garvin, OBRE Attorney, about our company's business plan to create a number of real estate kiosks that will be located in a number of retail locations and their compliance with the Illinois licensing laws. Before we go much further with this new product we want to make sure that we have all of our bases covered and that we do not violate any licensing laws. Mike wanted me to contact you and describe in detail the functionality of these kiosks and how they will be used by the general public as well as their benefits to the real estate industry and real estate brokerages.

The products that we are creating are real estate sponsored kiosks that will serve as physical locations to a

broker's existing virtual office website. These kiosks will be leased by local real estate companies and will be placed in a number of high traffic, targeted locations. We currently have secured a large number of contracts for the Chicagoland locations that these kiosks will be positioned. These kiosks will simply serve as an extension to the real estate office website in that they will allow home buyers and sellers to search for available homes on the market, just like a broker's own website. Each kiosk will be sponsored and leased by individual real estate companies so that it will appear to the home buyer or seller that they are utilizing the services of the sponsoring company's kiosk and in doing so will be required to register with that real estate company should they choose to search for homes in the MLS at that kiosk. The functionality of the search will be the exact same as on the website, whereby the customer will be able to pull up a list of homes that match their search criteria and then print the results out on paper or send it directly to their email for later viewing.

While these virtual office kiosks will be available for use by the general public, just as the real estate broker's own office website, there will be a number of safeguards in place to protect the MLS information and its use and to make sure that such use conforms to the MLS's VOW/IDX policies. The kiosks will also be monitored 24 hours a day so that in the event a system error takes place or an internet or database connection is lost, we will be able to instantly re-boot the local machine and re-establish the connection. In continuing the relationship between the sponsoring broker and the user searching on their kiosk, all user and search information entered into the kiosk will be sent directly to the sponsoring real estate company so that they may follow up with the user and help convert them from customer to client.

Detailed below, you will find the legal intent and definitions of terms as stated in the Illinois Real Estate License Act of 2000 and how our business plan meets or does not meet these definitions. We have prepared the information below in a "question & answer" format for the intent and purpose of showing how these "real estate kiosks" do not violate the "Act's" provisions.

Q. Can these kiosks be considered a branch office and if so, will they need a separate branch office license?

A. NO. As defined by the Act, a "Branch Office" means a sponsoring broker's office other than the sponsoring broker's principle office. "Office" means a real estate broker's place of business where the general public is invited to transact business and where records may be maintained and licenses displayed, whether or not it is the broker's principle place of business. When determining whether an office exists the following shall be considered by OBRE:

An office is any business location or structure which is owned, controlled, operated or maintained by a person who, at the location or structure, is:

1. Engaging in licensed activities
2. Offering real estate services to consumers
3. Holding out to the public that the person engaged in the practice of real estate brokerage
4. Maintaining original real estate documents and records related to active or pending transactions
5. Maintaining current escrow records; or
6. Meeting consumers for the purpose of engaging in real estate licensed activities

With regards to these definitions as defined by The Act, our kiosks would not constitute an office or branch office because none of the items listed in 1-6 above would be taking place at the kiosk nor would any acts be taking place that rise to the level of active representation on behalf of the consumer. All “acts” performed at the kiosk would be informative in nature and at most would only be defined as “ministerial acts”, which do not rise to the level of active representation. The kiosk structure itself will also not be owned, controlled, operated, or maintained by the sponsoring real estate brokerage. It will be owned, operated, and maintained by InVision Ideas & Development, L.L.C. who will essentially act as the property manager for the kiosk and will also be responsible for acquiring and handling the lease contracts with the various locations where the kiosks will be positioned.

The Act also defines a “customer” as “a consumer who is not being represented by the licensee but for whom the licensee is performing ministerial acts”. As such, because these kiosks will be put in public access points and they will simply be providing information to the consumer on property information, just as the broker’s own web site, the use of the kiosk would not constitute active representation. However, for the sake of accessing the property listing information, the consumer may still be required to register their information at the kiosk with the kiosk’s “sponsoring brokerage”. Again, this function is also required on all broker’s virtual office websites.

Q. Do the real estate kiosks meet the Act’s criteria for not constituting an office?

A. YES.

The “Act” continues; the following places do not constitute an office:

1. A motor vehicle used for transportation
2. A place whose purpose is solely devoted to advertising real estate matters of a general nature or to making a sponsoring broker’s business name generally known;
3. A place which a licensee uses solely for storage or archiving records; or
4. A licensee’s residence unless held out to the public as a location at which real estate brokerage services are available to the public.

Because of the nature of these kiosks and their positioning in areas of high traffic volume, the secondary function of the kiosk will be used to advertise the broker’s general business and the services that it provides, much like paper, magazine, and internet advertising that the broker does to promote its business activities.

Q. Can the Kiosk be considered a Virtual Office Web?

A. YES. The term Virtual Office Website (“VOW”) refers to a MILS Participant’s Internet website, or a feature of a Participant’s Internet website, through which the Participant provides real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search for MLS data, subject to the Participant’s oversight, supervision and accountability. As used herein “Participant’s VOWs” and “VOWs” also refers to such websites, or features of websites, operated by non-principal

brokers and sales licensees affiliated with MLS Participants, where permitted by this policy.

Since the kiosk will simply be accessing MLS and web site data that is already present on a web server and displaying it in the same manner as the broker's or MLS's own website, these kiosks would certainly fit the description of a virtual office web.

Q. What is the permanency of the kiosk?

A. The kiosk lease with the sponsoring broker shall only last for a period of one year. At the expiration of the contract lease, the sponsoring broker will have the option to re-new the lease. The contract will not automatically be extended upon its lease expiration. Based on the location of the kiosk and our contract with the retail location, the kiosk may be moved to other locations in the retail environment.

Q. Will there be any files maintained at the kiosk location?

A. NO. All client registration and search information will be sent directly to the sponsoring broker via email. Identical to the broker's own website, this information will allow the broker's sales agents to follow up with the consumer and try to turn them from customer to client. No physical transactions will take place at the kiosk.

Q. Can the sponsoring broker's kiosk be advertised as a branch office?

A. NO. Since the kiosk does not meet the legal definition of an office or branch office, the sponsoring broker will not be able to advertise "their" kiosk as a branch office. No activities that constitute a branch office will take place at the kiosk.

Q. Do these real estate kiosks exist in other states and real estate markets?

A. YES. ERA Realty and Realty Executives have already created the groundwork for real estate kiosks with their nationwide, un-manned "Electronic Home-Selling Network" and "Interactive Home Sales Center's". ERA Realty already has over 300 working kiosks nationwide and is expecting to come out with many more over the next two years. Canada has also made great advances in introducing these un-manned real estate kiosks in their country and has had great success with the general public. And while not directly regulated by the Office of Banks and Real Estate, the U.S. Housing and Urban Development (HUD) has installed over 106 real estate kiosks in public places throughout the United States for the use of searching all HUD homes available for sale. And while the OBRE does not have an influence on HUD, all HIJD homes are sold directly through local REALTORS, who are controlled and regulated by OBRE, who then list and sell these BUD homes to the general public. Through HUD's study of individuals who use their real estate kiosks, they found that 87% of those surveyed reported that they do not have access to the Internet. Not only are our real estate kiosks helping promote the local real estate market and individual brokers, but they also are assisting the large percentage of the general public that does not have access to the Internet and as such are "disadvantaged" in the home buying process. A photo

of the BUD kiosk, which is almost identical in design to our kiosk, can be found at:
<http://www.hud.gov/library/bookshelf15/kiosk/bkkiosk.cfm>

Q. Is there a need or demand for these real estate kiosks?

A. YES. With the real estate market evolving every day it is important for real estate brokers to find new ways to connect with and attract more buyers and sellers. With the advancement of the internet and multiple real estate trade publications with available home listings, real estate buyers and sellers are doing more of their own research on particular areas and homes before even contacting a licensed real estate agent. This product is for real estate brokers and their agents to help expand their business, create a more recognized real estate network, assist those that do not currently have access to the Internet for the purpose of researching the local real estate market, assist brokers in promoting their business services, and much like the internet, help make a direct connection between the customer and the real estate broker.

SUMMARY:

Based on the Real Estate License Act of 2000 and the research that we have done on its various legal intent, we feel that our real estate kiosks do not violate any license laws, would not be considered or require a separate branch office license, and would for all intents and purposes simply be considered a Virtual Office Web, just like the broker's own website. This conclusion can and should be based on:

1. The kiosk will only be providing limited ministerial acts.
2. There will be no engaging of licensed activities at the kiosks.
3. Under definition, the kiosk will not provide real estate "services".
4. There will be no real estate sales persons stationed or working at the kiosks.
5. There will be no real estate records or documents kept at the kiosks.
6. There will be no acceptance or maintenance of real estate escrow funds at the kiosk.
7. The kiosks will not be used as a means for meeting consumers for the purpose of engaging in real estate licensed activities.
8. The kiosk will primarily be devoted to advertising real estate matters of a general nature and helping to make the sponsoring broker's name generally known.
9. Because the kiosk is web based, the information that will be provided to consumers is the exact same information that can be searched for and retrieved off of a broker's own company website.
10. The kiosks clearly meet the definition of being a Virtual Office Website (VOW).
11. The permanency of the kiosk is short term, having a definite starting and end date and depending on the location may actually be relocated several times.
12. The kiosks will help fill the gap of those buyers and sellers who are currently disparaged by non-Internet access and will help create a more informed and educated consumer.

I hope you can see how this is a product for both the real estate industry and for the general public and that it clearly meets all the definitions and legal intent of the Licensing Act of 2000. We are looking to put the finishing touches on our product so that we can successfully introduce it into the general public. We kindly request your "approval" opinion of our real estate kiosks and if you have any questions or recommendations, we will gladly welcome them.

Please do not hesitate to contact me on my cell phone at any time. We are looking forward to moving along with this project and are grateful for all of your support and look forward to your response.

Sincerely,

Josh Dean
President
InVision Ideas & Development, L.L.C.
1803 Continental Ave. Suite 108
Naperville, IL 60563
630-707-0567

Correspondence from MLSNI's Info Systems Coordinator Brad Tertell, and OBRE's Legal Counsel Mike Garvin:

Brad Tertell

From: Richard Torp [Richard.torp@mlsni.com]
Sent: Wednesday, June 02, 2004 8:58 AM
To: Brad Tertell
Subject: Fwd: Re: **Real Estate Kiosk Proposal**

Date: Tue, 1 Jun 2004 20:39:20 -0700 (PDY)
From: Joshua Dean <joshuardean@yahoo.com>
Subject: Re: **Real Estate Kiosk Proposal**
To: Richard.Torp@mlsni.com

Hello Richard and Brad,

For the past two weeks we have been working with the OBRE Director of Enforcement, Mary Anne Benden; Mike Garvin, OBRE Legal Counsel, and our attorney, to try and get some resolution as to the legal status of our proposed real estate kiosks. Based on their interpretation, OBRE has determined that at this time, our real estate kiosks would need to be classified and regarded as branch offices. For this, the kiosks would not need to be manned with agents, but a managing broker would need to make sure all policies regarding their branch office kiosk are met and simply display the license of the branch office as well as the license of the managing broker of the branch office kiosk.

To provide you with some more insight into these kiosks as well as the development and advancement of these types of real estate kiosks in other markets in the United States, I have attached the document that we sent to OBRE Director of Enforcement and OBRE Legal Counsel. This should help clear up some questions as to our development. The only variance in our document would be the fact that these kiosks now will need to have a branch office license. Below, you will also find a copy of the forwarded email

correspondence between myself and OBRE Legal Counsel, Mike Garvin. Because of the nature of their position and role in OBRE, this is the closest affirmation of how our kiosks will need to be classified that we will be able to receive. All of their contact information at OBRE is clearly stated in the below attachment if your Board would like to contact them directly with any specific questions or follow-up. I will also be available for any further comments or questioning from your Board.

Now that we have confirmation as to the status of our kiosks, we will certainly put our plans in place so that the “sponsoring brokers” that we are working with are clearly aware of their branch office responsibility and can help facilitate the licensing of “their” real estate kiosk. By OBRE and state policy, the real estate brokers will not even be allowed to start the lease of our kiosks until they have acquired proper branch office licensure.

We hope that with the new status of our branch office kiosks as well as all of the safeguards in place to protect the MLS data and user information, that we will be able to continue our relationship with the MLSNI and provide a great service to the real estate market and in particular, local real estate brokers.

Please let me know when the Agreement for the MLS Database access is available for us to sign and return and we will gladly do so.

I appreciate all of the help and direction that you have given us and we look forward to continuing our relationship with the both of you and the MLSNI.

Sincerely,

Josh Dean
Broker
RealStar Realty
630-707-0567 (Cell)

Date: 5/26/2004 11:53:17 PM
From: Joshua Dean <joshuardean~yahoo.com>
To: “Michael Garvin” <MGARVIN@bre.state.il.us>

Hi Mike,

Thanks for your insight on our project. I have just a couple of follow up questions regarding the licensing of our kiosks.

1. Since the kiosk is simply an enclosed computer screen that will be accessing the internet and web servers and no physical activities or transactions will be taking place at the kiosk, is there any reason why we or the sponsoring broker would have to have them manned with agents or display any licenses other than the branch office license?
2. If we require the “sponsoring broker” to acquire a branch office license for the kiosk, have we met all

of the licensing laws or is there anything else that we need to consider and take care of before we introduce them into the marketplace?

3. It would appear that a broker's own website with MLS search capability would fall under the same parameters that you gave me in determining that a kiosk would be considered a branch office. It technically has a physical location on the web, it's permanent in that the space that it occupies online must be renewed and re-registered every month or year and is not easily moved except by the owner, consumers are obtaining information about specific properties on the market, and the sponsoring broker is being "held out" to the public on the internet as the responsible business. If so, why would a broker's own website not need to be licensed or registered with OBRE or the state as a "branch office"?

I certainly appreciate the help you and Mary Anne have provided us thus far and would appreciate your feedback and insight to the previous questions.

Thanks Mike,
Josh Dean
630-707-0567 (Cell)

Michael Garvin <MGARVIN@bre.state.il.us> wrote:

Mr. Dean,

Mary Anne Benden and I have reviewed your written submission. However, we disagree with your conclusion that the kiosks do not require branch office licensure. Consider the following: (i) the Kiosks are a physical location, (ii) permanent in that they are leased on a yearly basis, (iii) consumers are obtaining information about specific properties on the market, (iv) and the sponsoring broker is being "held out" to the public at the kiosk as the responsible business. In sum, any sponsoring broker leasing and using such a kiosk would have to treat the kiosk as a branch office.

Please feel free to call me if you would like to comment.

Mike Garvin
312-793-1219

Date: Thu, 27 May 2004 09:20:32 -0500
From: "Michael Garvin" <MGARVIN@bre.state.il.us>
To: <joshuardean@yahoo.com>
Subject: Re: Real Estate Kiosk Proposal

Mr. Joshua,

1. A branch office requires, at a minimum, that the licenses of the branch office and of the managing broker be posted. The managing broker will be responsible for all of the activities at the kiosk. Other "sponsored licensees," whether present or not, are not required.

2. The sponsoring broker should understand all of the responsibilities attaching to a branch office.
3. A broker's website and a kiosk are not the same. The website is electronic and the kiosk is indeed physical.

We stand by our position that the kiosks need to be licensed as branch offices.

Mike Garvin

Richard Torp
Information Systems Coordinator
MLS of Northern Illinois, Inc.
2443 Warrenville Road, Suite 510
Lisle, IL 60532
630-955-0011
630-955-0065 (fax)
Reply to: richard.torp@mlsni.com
URL: www.mlsni.com