

**B**efore setting up a "shop within a shop," you might consider a few legal principles and some important issues to address when considering the practice of real estate brokerage using teams.

### *What Is a Team?*

- ▶ While not defined within the Act, for discussion purposes, a "team" is a functional unit operating within a real estate brokerage office comprised of one or more real estate licensees and one or more administrative personnel.

### *The Act Applies*

- ▶ One simple rule to remember is that the Act applies to all licensees licensed to a sponsoring broker, whether they are part of a team or not.
  - The sponsoring broker will remain ultimately responsible for the oversight of the team and all of its licensed members.
  - A licensee must work for only one sponsoring broker. Thus, if a licensee is a team member, he/she will be sponsored by the same sponsoring broker as that of the "team captain" and not by the "team captain."
  - The sponsoring broker and not the "team captain" must pay every licensee on a team.
  - Each licensee on a team, whether a salesperson, broker-associate, buyer agent or licensed assistant, must have a written independent contractor or employment contract with the sponsoring broker.
  - The team must not be a separate corporation within the sponsoring broker's corporation. This would require another sponsoring broker, and licensees may only work for one.

NOTE: This is not to be confused with a licensee's ability to set up a single shareholder, unlicensed corporation for the purpose of receiving that licensee's compensation. See Section 10-20(e) of the Act and Section 1450.170 of the rules under the Act. Remember, only one licensee can receive compensation through that corporation.

### *Agency Issues*

- ▶ Designated agency, covered in Article 15 of the Act, applies to teams. As a result, if one team member represents the seller and one team member represents a buyer, they are not automatically dual agents, but designated agents for each party.
  - If this is the case, confidential information of opposing parties must be protected from team members on the opposite side of the transaction.
  - Office policies and procedures should address agency issues that arise within the team.
  - If the team practices disclosed dual agency, written disclosure and consent must be obtained before team members act as dual agents.
  - The sponsoring broker should analyze how the team is holding itself out to the public.
  - If a consumer or client would assume, based on the team's advertising or promotion, that all members of the team are working on the consumer's behalf then this would be dual agency in most cases.
  - On the other hand, if a consumer or client is told through advertising or promotional materials that team members represent opposing parties, and confidential information is protected, then perhaps there is no dual agency.

### *Advertising and the Use of Team Names*

- ▶ If the team has a "team name" which is used in advertising without using the name of the brokerage company, it would be up to the sponsoring broker to register that name with the appropriate governmental authority and the Department of Financial and Professional Regulation (DFPR). Neither the team as a unit nor any of the team members would have authority to register a "team name" that is different than the sponsoring broker's business name.
  - It is commonly known that the brokerage company name must appear in all ads. This is true in team advertising, too.
  - If the brokerage company is a franchise, then the company name and the franchise affiliation must appear in all ads. So, if a team name were included in the ad along with the company name and the franchise affiliation, no special registration of the team name would be necessary.
  - If the team name appears in an ad and the company name is also included, no additional registration of the team name would be needed.
  - If the team name were being used in lieu of the brokerage company name, then registration of the team name by the sponsoring broker is required.
- ▶ If the brokerage were a sole proprietorship, the assumed business name would be registered in the counties in which the company does business.
- ▶ If the brokerage were a corporation, the assumed name would be registered with the Illinois Secretary of State's Office.
- ▶ Once the assumed name is properly registered, it must also be placed on file with DFPR.

### *Independent Contractor v. Employee*

- ▶ The sponsoring broker must consider whether licensed team members should be treated as independent contractors or employees under the Internal Revenue Code and the Fair Labor Standards Act.
- If the team member is a licensee, that member could be an independent contractor under statutory provisions of the Internal Revenue Code or under the common law "20 factor test."
- If a licensed team member is a statutory independent contractor, this might be true for tax purposes only; and for other purposes the licensee might be a common law employee. For example, the Illinois workers' compensation laws might apply, for which the sponsoring broker would be responsible.
- In either case, a licensed team member must have a written contract with the sponsoring broker.
- Unlicensed team members will be employees. Either the sponsoring broker or a licensed team member could compensate them. The sponsoring broker will want to ensure proper withholding requirements are met.

Note: This brochure is provided for informational purposes only and you may need to consult legal counsel for specific advice.



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## *Teams and the Illinois Real Estate Brokerage Firm*



Look inside for quick information about "teams" within an Illinois real estate brokerage firm and how they might operate in accordance with the Illinois Real Estate License Act of 2000 (the Act)