



Ohio Association of REALTORS®

White Paper

Teams: Is Your Team Violating Ohio License Law?

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OAR Legal Services



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Are you a member of a team or thinking of forming one? Or are you a broker or manager who has agents who work as a team? Teams have become a very successful business model for many Ohio REALTORS for a variety of reasons. They allow agents to pool their resources and tap into the skills and experience of other licensees and provide support to assure that client needs are being met.

However there are some specific license law provisions that apply to teams as well as agency and commission issues that team members – and the brokers and managers who supervise them — must be aware of to avoid license law violations. Below are these key areas:

What is a Team?

Ohio license law defines a team as any group of two or more associated real estate licensees affiliated with the same brokerage and/or other non-licensed professionals, such as administrative assistants and other professionals specializing in real estate related fields that advertise together. This means you must have at least two licensees who advertise together to be a team.

The most important thing that must be understood about teams is that they are not licensed by the Ohio Division of Real Estate and Professional Licensing. While the license law permits two or more licensees to work together and advertise as a team, the Division does not recognize the team as a licensed entity and instead the team members are still individually licensed agents and brokers.

Broker Responsibility

Just because agents work together as a team doesn't change the broker's obligations. Under Ohio license law a principal broker has a duty to oversee the activities of the licensees affiliated with the brokerage. This includes agents and other brokers who are on a team. Therefore, even though a team may form an LLC, act like a "business" within the brokerage, have a team "leader" and even hire its own unlicensed staff, the principal broker is still obligated to oversee the activities of the licensees on the team.

Team Name

The Ohio Division of Real Estate and Professional Licensing does not permit a team name to include the terms "Realty" or "Real Estate." This position is based on the fact that because a team is not a licensed entity, the use of such terms by a team would be likely to mislead the public to believe the team is a brokerage, which of course it is not. Therefore, the use of team names such as "Awesome Real Estate Team" or "Smith Realty Team" are not permitted by the Ohio Division of Real Estate and Professional Licensing.

Advertising

In 2002 the Ohio Real Estate Commission adopted a team advertising rule that permits licensees to advertise as a team as long as they comply with certain requirements.

Here's what's required:

- The brokerage name must be included in **all** forms of advertising by the team. That includes print, websites, yard signs, billboards, business cards, etc.
- In addition to the team name, you have to include the name of at least one individual affiliated with the team in **all** ads. Therefore if the team name is The Smith Team, any advertising including yard signs must also include the full licensed name of at least one agent on the team, i.e. Jane Smith. The only exception to this requirement is if the team name includes the full licensed name of one of the agents (i.e., the Jane Smith Team).
- The team name can't be more prominent than the brokerage name – and neither can the individual name of a team member. This prominence rule applies to all ads including yard signs, newspaper ads, your website, etc. When determining prominence, the Division will compare the team name to the brokerage name as it appears on the brokerage license. That means any brokerage logos and franchise names will not be included when comparing the brokerage's name with that of the name of the team or an agent.
- If you include the name of an unlicensed team member in an ad (i.e., an unlicensed assistant) that person must be identified as unlicensed in the ad.

Agency Issues

Another important issue that arises when agents work together as a team is identification of the agency relationship the team members have with buyers and sellers. Do all team members represent each other's clients? Or do individual team members represent just their own buyers or sellers? This is crucial to establish for purposes of completing listing agreements and the Agency Disclosure Statement and more importantly, to assure that agency duties are met. It is crucial that the broker is involved in these issues to assure that the team is working in a manner consistent with the brokerage's policy on agency and are in compliance with the license law.

First let's look at how agency relationship can be established by team members. Many teams are set up where all the team members represent all of the clients of the team and this is reflected on the listing and other agency documents. Therefore, if one team member has a listing that is being purchased by a buyer who is represented by another team member, both agents would be dual agents. As such, both agents must conduct themselves in a manner that is consistent with dual agency. This means the agents must both remain neutral, cannot disclose confidential information, cannot negotiate or advocate for either party, etc. This practice often makes sense based upon the nature of the relationships of the agents within the team and also the relationship between the team and its clients.

Some brokers, however, allow teams to practice "split" agency within the team — meaning that the listing agent in the team can represent only the seller and another member of the team will represent only the buyer in a transaction. In order for this to work, each agent in the team must

fulfill his fiduciary duties to his respective client, which includes the duty of loyalty, acting in the best interests of the client, and protecting the client's confidential information. To comply with this duty of confidentiality, agents within the team **cannot** have access to the confidential information of the clients of the other agent in the team.

With respect to the issue of loyalty, it is also crucial that agents functioning as a team understand that the interests of their respective clients must come first and that their conduct should not be influenced by their relationship with other team members. For example, often a team may have one agent who is the primary team leader or "rainmaker." This agent often takes the majority of the listings and refers any buyers to other team members. In this situation, even though a buyer's agent may get most of her clients from the team leader, she must be careful not to be influenced by this relationship when representing a buyer in a transaction with that team leader.

In making decisions regarding the agency relationships of team members, it is important that a variety of factors be considered by the agents involved and of course it is the principal broker's duty to supervise these agents and their conduct.

Listing Agreements, Agency Disclosure Form, etc.

Often on listing agreements the name of the team will be listed as the seller's agent or on the Agency Disclosure form as representing a party to the transaction. While Ohio license law allows a team name to be included in advertising, the team itself has no recognized status as a real estate licensee. For this reason on documents such as listing agreements and the Agency Disclosure form the names of the individual licensees who are representing the seller, buyer or both must be identified. This is necessary so that the parties to the transaction know who the licensees are and who they represent. Thus, while it is OK to indicate the team name, you need to also indicate the names of the individual licensees in that team who represent the client.

In cases where there are numerous licensees in the team that are representing the seller or buyer it may be difficult to include all of their names in the space provided. In this case it is acceptable to indicate the team name on the document and then reference an attached list of the team members who represent that client.

Payment of Commissions

Ohio license law provides that it is the duty of the broker to pay affiliated agents – including those who are on a team – their earned share of a commission. This is interpreted by the Ohio Division of Real Estate and Professional Licensing to mean an agent must receive payment of commissions from the brokerage directly. Therefore, a commission earned by an agent cannot be paid to the team or to a team leader and then disbursed to the team members.

The only exception to this rule is if a licensee is a member of an LLC or an owner or officer in a corporation. Ohio license law was amended several years ago to allow a broker to pay an agent's commission to the LLC or corporation in that instance. A licensee who has an ownership interest

in such an entity or is an officer of a corporation must provide verification of this fact to their broker and the broker can then legally pay their commission to that entity.

Therefore, if an agent is a member of a team, the broker can pay a commission earned by that agent to the team if:

1. The team is an LLC and the agent who earned the commission is a member of the LLC (i.e., has an ownership interest in the LLC), or
2. The team is a corporation and the agent who earned the commission is either an officer or a shareholder in that corporation.

If either of these situation exists, the broker can legally pay the agent's commission to that LLC or corporation, which can then disburse payment to the agent.

If the team is **not** an LLC or corporation, or it is an LLC or corporation but the agent has no ownership interest in the entity or isn't an officer, the agent's commission **cannot** be paid to the team; instead the brokerage must pay the team member his/her commissions directly.

Avoiding Team Disputes

Teams are not for everyone. In some instances the team may dissolve or a team member may decide to leave the team, sometimes due to compensation disputes. This can result in the broker, who issues payment of commissions to the agents, being placed in the middle. Here are a few steps that should be done to avoid disputes:

- Team members should have written agreements setting forth the terms of their working relationship, including specific commission agreements;
- The broker should require that team members provide him with a copy of that commission agreement; and
- The broker should require that team members sign a document agreeing that the broker will pay commissions owed to team members pursuant to that agreement unless the broker is provided with signed instructions from all affected members that provides otherwise.

Legal information provided in this White Paper is intended to provide broad, general information about the law and is not intended to be legal advice. Before applying this information to a specific legal problem, readers are urged to seek advice from an attorney.

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