



Teams and the Illinois Real Estate Brokerage Firm

This document contains 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).

Before 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?

A "team" is defined in the Act, and 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. It could be viewed more like a division within a company because it is not organized as a separate entity.

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 must have a written independent contractor or employment contract with the sponsoring broker.
- The team must not be a separate corporation or other business entity within the sponsoring broker's corporation. This would require another sponsoring broker, and licensees may only work for one at any one time.

NOTE: This is not to be confused with a licensee's ability to generally set up a single owner, unlicensed entity for the purpose of receiving that licensee's compensation. See Section 10-20(e) of the Act and Section 1450.745 of the rules under the Act. Remember, only one licensee can receive compensation through that entity; unless there are two married and licensed owners working for the same sponsoring broker; or one (1) licensee

and that licensee's unlicensed spouse as owners of the entity.

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 can be 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 your company or the team is saying to the public that the team represents everyone (both sides) then even if your office policy is designated agency, this may create dual agency requiring disclosure and consent of the parties. The bottom line questions to ask are whether you are protecting opposing parties' confidential information and what representations you are making to the public.
- If a consumer does not agree to dual agency and the team routinely acts as dual agents, that consumer must be referred outside of the team.

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 the sponsoring broker's job to register that name with the appropriate governmental authority and the Illinois Department of Financial and Professional Regulation (IDFPR) as an assumed name or dba. Neither the team as a unit nor any of the team members have authority to register a "team name" that is different than the sponsoring broker's business name.

- 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 is included in the ad along with the company name and the franchise affiliation, no special registration of the team name is necessary.
- If the team name appears in an ad and the company name is also included, no additional registration of the team name is needed.
- If the team name is being used in lieu of the brokerage company name, then registration of the team name by the sponsoring broker is required.
- The team name must not be misleading. To that end, the Act prohibits the use of inherently misleading terms in the team name such as "company," "realty," "real estate," "agency," "associates," "brokers," "properties," "or" "property."
- No team name or licensee's name contained in any advertising from billboards to business cards shall be larger in size than the sponsoring broker's company name.

APPLIES ONLY WHERE TEAM NAME IS USED IN LIEU OF SPONSORING COMPANY NAME:

- If the brokerage is a sole proprietorship, the assumed business name would be registered by the sponsoring broker in the counties in which the company does business.
- If the brokerage is a corporation, the assumed name would be registered by the sponsoring broker with the Illinois Secretary of State's Office.
- Once the assumed name is properly registered, it must also be placed on file with IDFPR.

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, the Fair Labor Standards Act and other applicable laws.

- If the team member is a licensee, that member could be treated as an independent contractor under statutory provisions of the Internal Revenue Code or under the “traditional test” for independent contractor.
- If a licensed team member is a statutory non-employee, 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 the team or team leader could compensate an unlicensed team member. The sponsoring broker will want to ensure who is responsible for paying the employee and for complying with all applicable employment requirements, such as withholding employment taxes and workers’ compensation obligations.

Note: This document is provided for informational purposes only and you should consult legal counsel for specific and more detailed advice.



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