

Implementing the New Broker Supervision Rules – Part II

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In the June and November 2005 issues of *Broker Supervision Newsletter*, we wrote about the Department of Regulation and Licensing's (DRL) revised broker supervision rules. This month we address some of the other responsibilities the DRL expects of broker supervisors, as well as other practices that may be prudent for a broker who has supervisory responsibilities. RL 17.08 is entitled "Supervision of employees," and it requires a broker-employer to supervise the activities of any licensee employed by the broker-employer. In this section, the DRL indicates that supervision includes, but is not limited to:

- The reasonable review of transaction documents;
- Providing salespeople with written procedures for handling listing contracts, offers to purchase and other documents relating to transactions;
- Providing all licensees reasonable access to a supervising broker for purposes of consultation regarding real estate practice issues; and,
- Notifying all salespeople where a copy of the DRL rules can be found.

What else may the DRL expect of supervising brokers when it says supervision includes, but is not limited to these items?

Notice of Employment

Every individual hired by the broker to perform licensed services must obtain, and retain, a real estate license. It is the broker's responsibility to insure that all agents working for the brokerage have obtained a license before they begin performing brokerage services. RL 17.04 requires that a licensee who wishes to engage in real estate practice as an employee of a broker-employer shall notify the department of the name of the broker-employer. The department provides forms, which must be used for this purpose.

BROKER Pointer

For more detail on several of the rules discussed in this issue, see Legal Update 01.10, "Accessible Offices and Homes - A Guide to the ADA and Visitability," Legal Update 04.05, "Avoiding Liability When Signing and Making Referrals," and Legal Update 02.01, "Getting Paid Outside of the MLS."

Duty to Confirm Renewal

RL 17.07 places the burden on the broker-employer to confirm that every licensee employed by the broker not only has a license at the time of hiring, but also to confirm the timely renewal of the license each biennium. Failure to ensure that every agent has renewed his or her license before allowing the agent to continue to practice real estate on behalf of the broker is a common source of discipline by the department.

Working for More Than One Brokerage

Occasionally, a licensee may want to work for two different companies, perhaps because the companies engage in different types of real estate practice. For example, one company may engage in residential sales,

and another company may focus on property management. RL 17.03 gives guidelines that make it clear that a salesperson's license only allows the salesperson to practice real estate when employed by a broker. Since a licensee may only be employed by one broker-employer at any time, a salesperson can only work for one company.

The rules are different for someone with a broker's license, since that person can practice as a broker without being employed by another broker. RL 17.03(1) states that a broker who is employed by a broker-employer may also engage in real estate practice in his or her own name, if the broker obtains written approval from the broker-employer and avoids conflicts of interest with his or her employment by the broker-employer.

Ensure Salesperson Compliance with Americans with Disabilities Act (ADA)

The ADA requires that auxiliary aids and services must be provided to ensure effective communication and thus ensure disabled individuals access to the services provided to the public by office salespeople. Do your agents understand their obligations to assist persons with hearing, vision or mobility impairments? If not, review *Legal Update* 01.10 (www.wra.org/lu0110).

Reporting Problems to the Broker

If a broker is to properly supervise salespeople and also manage risk and satisfy errors and omissions (E&O) requirements to notify insurers of potential claims, the broker must be promptly informed of:

- Consumer complaints involving real estate transactions.
- Automobile accidents occurring while the Associate is participating in real estate brokerage transactions.
- Criminal charges against the Associate, and traffic offenses related to driving under the influence of alcohol or drugs.
- Civil lawsuits or administrative actions involving real estate brokerage transactions.
- DRL contacts concerning disciplinary actions or other purposes.
- Threatened legal or administrative actions involving the parties and/or a real estate transaction.
- Acts of discrimination committed by Associates or parties to transactions.
- Unresolved disputes between Associates, within or outside the office.
- Physical injuries within the office or outside the office while in performance of services or duties in the name of the broker.
- Acts of harassment.

Does your office have a clear, enforced policy regarding these matters? Of special note is the need to consult E&O requirements to notify the carrier about potential claims. Many insurance companies have tightened this requirement, and any broker supervising agents should have a complete understanding of the exact requirement established under the E&O policy.

Inspection Services and Surveys

What policies and procedures are in place to guide agents in situations in which contractor/

inspector referrals or direct hiring is necessary? *Legal Update* 04.05 provides excellent guidance on these issues, including model forms for the "Authorization and Release From Liability" when ordering services for parties, as well as a model "Service Request" form to use when actually ordering services on behalf of a party (www.wra.org/lu0405).

Supervision of Teams

Agents cannot personally employ licensed persons to engage in real estate practice. Companies employ these licensees and must supervise them, even if they are assigned to a "team." All "team members" and personal assistants providing licensed services must be supervised by a broker designated by the company. The new broker supervision rules allow a company to delegate these supervisory duties to the team leader (if he or she has a broker's license), but the company remains liable for any damages arising from the brokerage services provided by these team members. The question brokers must ask themselves is whether or not it is prudent to delegate supervision of a team to a team leader.

Referral Fees

Finally, the issue of referral fee agreements entered into by agents is a huge issue today. What role does your company play in supervising these referral relationships? For more information on this subject refer to *Legal Update* 02.01. It includes a referral fee checklist, which is very useful for companies trying to manage referral fee activity (www.wra.org/lu0201).