

# **The Supervising Broker**

## Duties & Responsibilities

## **The Supervising Broker**

- I. Introduction & Objectives
- II. Duties of the Supervising Broker
- III. Broker Self Audit & Liability

# What's in a Name?

This case study highlights the importance of accuracy in your real estate advertisements. When real estate licensees and brokers think about accuracy we usually hear about the importance of accurately describing the property or facts related to the transaction. This Virginia Real Estate Board case illustrates the importance of accurately identifying your role in the transaction.

## THE SITUATION:

Alexis Lipkin was issued a real estate salesperson license in 2005, where he was affiliated with Excellent Realty, Inc., a brokerage firm.

On December 1, 2017, Mr. Lipkin ran the following advertisement in the *Real Estate News Journal*, where he identified himself as a Principal Commercial Broker:



## THE INVESTIGATION:

Investigators learned that in addition to serving as a real estate salesperson, Mr. Lipkin was the manager and president of BizBrokers, LLC in Virginia. BizBrokers, LLC provided merger and acquisition services for organizations that wish to sell their businesses. In his role, Mr. Lipkin would serve as business broker by advising the business and assisting with negotiations between the buyer and the business owner for the sale of the business.

However, in this transaction, Mr. Lipkin confirmed that his role was as a real estate salesperson and not as a real estate broker. Investigators confirmed that he did not have a brokers' license and that he was not acting as a business advisor in this transaction.

Mr. Lipkin reported that he was very busy at the time of the transaction and did not notice the use of Principal Commercial Broker and admitted that the advertisement lead people to believe he was a broker of a real estate firm. He admitted that he made the error and did not have an excuse for it.

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## **EMD & SAFEGUARDING THE PUBLIC**

This case study highlights how brokers may be held responsible for errors of their employees in the handling of earnest money deposits (EMD). It again demonstrates the importance of following the regulations pertaining to earnest money deposits.

### **THE SITUATION:**

On June 13, 2019, the Department of Professional and Occupational Regulation received a written complaint from Elise Perkins, Principal Broker for West Realty, Inc., regarding Daniella Tram and an alleged violation of escrow regulations.

Daniella Tram obtained her real estate salesperson license on June 4, 2004, and her broker license in February 2012. She also was an associate broker with West Realty, Inc. and the team leader for Tram Realty Group, a team that operated under West Realty, Inc.

### **THE INVESTIGATION:**

On May 25, 2019, Stephanie Young, as Buyer, and Remi Horowitz, as Seller, entered into a Standard Purchase Agreement (“Contract”) for the purchase of 1000 Main Street, Tappahannock, Virginia. The seller did not have an agent. The buyer was represented by West Realty Inc., and Eli Mormon represented the buyer. The contract indicated a \$500 earnest money deposit to be held by West Realty, Inc.

Investigators learned that on May 9, 2019, Mr. Horowitz gave the EMD check to Sasha Cleo, Director of Operations for Tram Realty Group. Ms. Cleo placed the EMD check into an envelope for processing.



On May 27, 2019, the Contract was ratified.

On June 6, 2019, Ms. Cleo submitted the EMD check to West Realty, Inc.

On June 9, 2019, the EMD check was deposited into the escrow account for West Realty, Inc.

Ms. Cleo told investigators that she found the EMD check when she was placing an EMD check for another property in the envelope on June 6, 2019. She stated that she put the EMD check in the envelope because she had been working on other contracts at the time.

Ms. Cleo reported that she is responsible for handling EMD checks. Investigators learned that agents for the Tram Realty Group turn in EMD checks to her. They generally turn in the EMD checks at the same time as ratified contracts but may also turn in EMD checks to Ms. Cleo prior to contract ratification. Ms. Cleo stated that when she receives an EMD check, she will put it in an envelope until she processes the ratified contract. Agents provide Ms. Cleo with a physical copy of the ratified contract, the EMD check, and the completed West Realty, Inc. sales checklist.

Upon receipt of a ratified contract, Ms. Cleo stated that she scans and uploads the contract into their electronic records system. She makes a copy of the first page of the ratified contract, reviews the sales checklist for completion, and gathers the EMD check. She provides these documents to the transaction coordinator for West Realty, Inc. Ms. Cleo reported that she generally turns in the ratified contract, EMD check, and sales checklist to the transaction coordinator on the same day that she receives the information from the agent.

Ms. Tram told investigators that the contract and associated paperwork for this transaction were somehow turned in to the transaction coordinator for West Realty, Inc. without the EMD check. She stated that when Ms. Cleo went to put an EMD check for another property into the awaiting ratification envelope, Ms. Cleo found the EMD check for the subject property. She immediately handed the EMD check over to the West Realty, Inc. transaction coordinator and called Ms. Tram to let her know that the EMD check was not deposited timely.

West Realty, Inc. requires agents to turn in ratified contracts and EMD checks within two days of contract ratification. Ms. Tram stated that agents in the Tram Realty Group are to obtain the EMD check at the time an offer is written. Agents are to place the EMD check into the property folder. Agents provide the property folder to Ms. Cleo, who places the EMD check into an envelope for transactions awaiting ratification. Upon ratification, agents may turn in a physical copy of the ratified contract or email a copy to Ms. Cleo. Ms. Cleo then completes an additional packet of information related to the transaction, uploads the Contract into the electronic records system, attaches the EMD check to the ratified contract, and forwards all documentation to the transaction coordinator for deposit.



Ms. Tram stated that she verbally notified Ms. Perkins that the EMD check for the subject property had not been timely deposited. Ms. Tram also had Ms. Cleo notify Ms. Perkins. Ms. Tram stated that the seller was also notified by e-mail that the EMD check had not been deposited in a timely manner.

Ms. Tram stated that she took it upon herself to review EMD and ratified contract submission policies with the other members of the Tram Property Group.

#### **THE RESULT:**

The Board determined that Ms. Tram, as Associate Broker, failed to ensure an unlicensed assistant of West Realty, Inc. delivered the EMD for the subject property so that it could be deposited in the brokerage firm's escrow account within five business banking days of ratification of the contract and therefore failed to safeguard the interests of the public. The Board issued a \$1,000 fine and required Ms. Tram to attend three classroom hours of Board-approved continuing education pertaining to Escrow Management.

*Published October 2020*

## Broker Supervision

This case highlights the importance of broker supervision regardless of the size of the firm. It is important for brokers to maintain appropriate records, and know the activities of their agents. While this task may seem particularly important when a brokerage firm has multiple salespeople, it is required by the regulations regardless of the size of the firm.

### THE SITUATION:

In February 2010, Ms. Rebecca Jenkins was issued a real estate principal broker license. She began to operate her own firm, Realty By Rebecca, in March 2012. Realty By Rebecca had only one salesperson associated with the firm, Juan Brones. During a review of documents pertaining to a separate complaint, investigators noted that Ms. Rebecca Jenkins, as a principal broker, may not have provided adequate supervision in maintaining written procedures and policies covering all content areas identified by the Board, failed to maintain records, failed to keep complete and accurate financial records, and failed to take reasonable action after becoming aware of a violation against a licensed salesperson.

The investigators made a request to docket a new file against Ms. Jenkins.

### THE INVESTIGATION:

Investigators noted that in November 2016, Mr. Andrew Fellows entered into an Exclusive Authorization to Sell agreement (“Listing Agreement”) with Realty By Rebecca to sell a house located at 123 West Street, Hampton Roads, Virginia. The Listing Agreement began on November 1, 2016, and expired April 30, 2017.

On April 25, 2017, Mr. Fellows, as landlord, entered into a Residential Lease to rent the same property beginning on June 1, 2017. The lease specified Realty By Rebecca as the agent for the landlord and was signed by Mr. Brones. Almost a year later, Mr. Fellows, as seller, entered into a Residential Contract of Purchase for the sale of the same property with Ms. Lindsey Cuff as buyer. The contract was ratified on May 15, 2018, and closed on June 21, 2018. Realty By Rebecca was listed as both the listing and selling firm. Mr. Brones was listed as representing both parties.

The investigators found that Ms. Jenkins did not obtain written brokerage agreements with Mr. Fellows for either the lease or the sale of the property, nor did Ms. Jenkins obtain a brokerage agreement with Ms. Cuff for the purchase of the subject property.

During an interview, Ms. Jenkins acknowledged that brokerage agreements were never obtained from Mr. Fellows nor Ms. Cuff. She stated that while “obviously there are missing documents” in the file, there was a valid contract which “seemed to be enough.” Ms. Jenkins also stated that she had spoken to Mr. Brones about the missing paperwork and he had indicated that a current brokerage agreement existed. Ms. Jenkins, however, did not review the file and stated that “the ball was dropped.”

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## Disclosure of Licensee Status

This case study highlights the importance of making the necessary disclosures with regards to your real estate license status, and making sure that all agents in your firm understand when this disclosure must be made. Despite not actively listing real estate in over 20 years, this agent was still a licensed Virginia real estate agent and needed to adhere to the applicable Virginia laws and regulations.

### THE SITUATION:

On August 1, 1983, Anna Kelley was issued a real estate salesperson license. On March 1, 1989, Ms. Hobbs' license was upgraded to a broker license. On May 13, 1993, Ms. Hobbs was issued a sole proprietor license.

In 2018, Ms. Kelley decided to sell her house in Richmond, Virginia, and selected Kathleen Finnis of the Hill and Harkey Realty Company to represent her. The Multiple Listing Service listing for the property disclosed Ms. Kelley's ownership interest with the subject property as "Owner Agent."

The Guthries purchased the house in July 2018 and later submitted a written complaint to the Department of Professional and Occupational Regulation against Ms. Kelley because they were not made aware of Ms. Kelley's ownership interest until after signing the purchase agreement.

### THE INVESTIGATION:

Investigators learned that Ms. Kelley manages some rentals and generates a small income from referral fees when her children purchase property. She stated that she has not listed a property in over 20 years.

The Multiple Listing Service listing for Ms. Kelley's house disclosed Ms. Kelley's ownership interest as "owner agent." In addition, during showings, Ms. Kelley reported that when agents came through the home for showings they "knew that there was a placard that said this owner is a licensed real estate broker."

Ms. Finnis presented Ms. Kelley with an offer to purchase from Stephanie and Jessie Guthrie. The offer had been prepared by Lauren Michele as the designated agent, also with Hill and Harkey Realty Company, to represent the buyers. Paragraph 30(b) of the Residential Contract of Purchase provided space for a real estate licensee to disclose his or her licensee status.

Ms. Kelley reviewed the offer and noted that the offer did not contain a written disclosure indicating that she is a licensed real estate agent. She reported to investigators that she asked Ms. Finnis if there should be a new contract. Ms. Finnis told her to sign the contract and that there would be an amendment to disclose Ms. Kelley's status.

On June 13, 2018, the Guthries and Ms. Kelley entered into a Residential Contract of Purchase for Ms. Kelley's home. On July 2, 2018, the Guthrie's signed an Amendment to the Residential Contract of Purchase acknowledging that Ms. Kelley is a licensed real estate agent in the state of Virginia.

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## FAILURE TO SUPERVISE

This case highlights the importance of broker supervision, and how it is important to ensure that only licensed individuals engage in licensed activity. Further, it demonstrates the importance of having policies pertaining to advertising and that you must enforce the policies in your office.

### THE SITUATION:

Mr. Bryan Thomas was issued a Principal Broker License in Virginia in October 2014. He is the Principal Broker for Thomas Real Estate Investment Services, Inc., which is headquartered in Maryland, and has branch offices in Charlottesville and Roanoke, Virginia.

During a review of documents pertaining to another complaint, the Department of Professional and Occupational Regulation discovered that Mr. Thomas may be in violation of the Board's regulations.

### THE INVESTIGATION:

Investigators learned that Thomas Real Estate Investment Services, Inc. entered into an Exclusive Right to Sell with West Partners LLC as Seller on July 25, 2018. The agreement was to sell a home located in Alexandria, Virginia. The agreement was signed by Mr. Thomas and Elizabeth McManus, Vice President for the Seller. The agreement stated, in part:

*4. Services of Broker. Throughout the term of this Agreement, Broker shall diligently use its best efforts to market and procure a purchaser for the Property in accordance with the highest standards for brokers for such services. Those efforts shall include, but not be limited to the following:*



*(a) Broker shall appoint Rebecca Botts, **Brody Chin**, and Christina Zhang, as the “Project Team” for marketing of the Property.*

*16.Cooperating Broker. . . . Broker’s listing team for the purposes of implementing the obligations of Broker hereunder shall consist of Rebecca Botts, **Brody Chin**, and Christina Zhang. Owner and Broker agree that all non-listing Team agents who represent prospective purchasers shall be considered Cooperating Brokers for the purposes of this Agreement*

On July 25, 2018, Brody Chin was not licensed in Virginia, but did have his real estate license in Maryland. On December 23, 2018, Mr. Chin was issued a Real Estate Salesperson License in Virginia.

During the investigation, Mr. Thomas told investigators that the language used in the Agreement was not accurate. He explained that Mr. Chin was on the team to help bring the property to the attention of out-of-state buyers. He intended for Ms. Botts to serve as the listing agent, but because the seller would not understand the nuances of their roles, he thought this was a more streamlined way for the agreement to be worded.

He admitted that it was an oversight to have an unlicensed individual listed as part of the marketing team.

Investigators also reviewed an email advertisement for the Alexandria property. The advertisement only included the name of “Thomas Real Estate” rather than the full licensed name of Thomas Real Estate Investment Services, Inc and the entity did not have a registered fictitious name. In addition, the email included the contact information for Brody Chin, Rebecca Botts, and Christina Zhang.

Mr. Thomas told investigators that he had informed licensees associated with him on multiple occasions that associates who are not licensed in Virginia cannot include their names on advertisements for properties located in Virginia. He stated that Mr. Chin did not seek Mr. Thomas’s approval before circulating the email and that he did not see it before it went out.

Mr. Thomas reported that he took steps to ensure this does not happen again and that he has a clear policy that he is supposed to sign off on all advertisements.

## **THE RESULT:**

The Board determined that Mr. Thomas failed to ensure licensees for whom he had oversight responsibility held active licenses while practicing real estate and failed to ensure that all advertising was under his direct supervision and contained the firm’s licensed name. The Board issued a fine of \$800

for both violations and required him to complete eight hours of Board-approved continuing education pertaining to Broker Management and Supervision.

*Published January 2020*

# ADVERTISING

## SOME BASIC CONTENT GUIDELINES



### PRINT

#### GENERAL

- ▶ FIRM NAME
- ▶ AGENT NAME

#### BUSINESS CARDS

- ▶ AGENT NAME
- ▶ FIRM NAME
- ▶ CONTACT INFO (PHONE OR WEB ADDRESS)

#### FOR SALE/ LEASE SIGNS

- ▶ FIRM NAME
- ▶ FIRM PRIMARY/ BRANCH PHONE

### DIGITAL

#### GENERAL

- ▶ AGENT NAME
- ▶ FIRM NAME
- ▶ CITY & STATE OF AGENT'S OFFICE
- ▶ STATES OF LICENSURE



**CONTACT INFO IS ON THE MAIN PAGE OR ONE CLICK AWAY AND SHOULD BE CLEARLY & LEGIBLY DISPLAYED**

# Separating Licensed & Unlicensed Activities

By: Guest Author, Virginia REALTORS® Senior Vice President of Member Programs, Adam Smith

If you have an unlicensed assistant or are looking to obtain one, here is a list of what activities do and do not require a license. (Outlined by the Virginia Real Estate Board in 18 VAC § 135-20-165 (6)-(7))

## **Does NOT require a license:**

- Perform general clerical duties, including answering the phones, responding by electronic media, and providing information shown on the listing;
- Submit listings and changes to the MLS;
- Follow up on loan commitments after contracts have been ratified;
- Have keys made for listings;
- Compute commission checks;
- Place signs on properties;
- Act as a courier service;
- Schedule appointments;
- Record and deposit earnest money, security deposits and advance rents;
- Prepare contract forms for approval of the licensee and supervising broker;
- Prepare promotional materials and advertisements for approval of the licensee and supervising broker;
- Assemble closing documents;
- Obtain required public information from governmental entities;
- Monitor license and personnel files;
- Order routine repairs as directed by licensee;
- Receive compensation for their work at a predetermined rate that is not contingent upon the occurrence of a real estate transaction; and
- Perform any other activities undertaken in the regular course of business for which a license is not required.

## **DOES require a license:**

- Show property;
- Hold an open house;
- Answer questions on listings, title, financing, contracts, brokerage agreements, legal documents;
- Discuss, explain, interpret, or negotiate a contract, listing, lease agreement, or property management agreement with anyone outside the firm; and
- Negotiate or agree to any commission, commission split, management fee, or referral fee.

Use this list to build an unlicensed assistant job description and, most importantly, to ensure you operating within the established regulations. For more information and frequently asked questions about licensure and other real estate topics, click [here](#).



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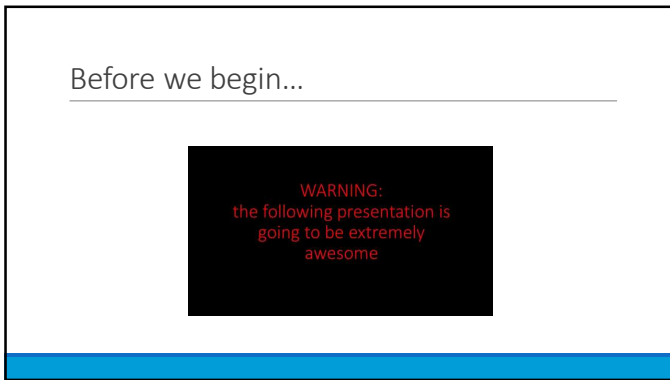
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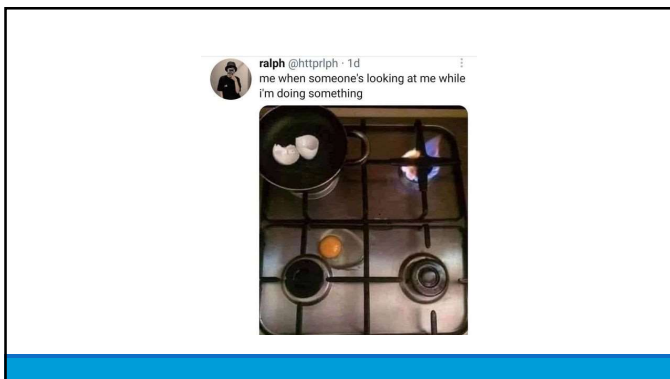
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# The Supervising Broker –

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## DUTIES AND RESPONSIBILITIES

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### Today's Objectives



- **Define Supervising Broker** as outlined in Chapter 21 of Title 54.1 of the Code of Virginia
- **List the Supervising Broker's responsibilities** as outlined in Chapter 21 of Title 54.1 of the Code of Virginia
- **Use Case Studies** to add meaning and depth to various duties and responsibilities

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### Supervising Broker – Definition

Chapter 21 of Title 54.1 of the Code of Virginia

- Responsible for the supervision of the acts of all licensees assigned to the branch office or real estate team.
- Each branch office must have a supervising broker.

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## Duties of the Supervising Broker

A. Be available to all licensees under their supervision



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## Duties of the Supervising Broker

Must live within 50 miles of a branch office.....  
Can manage multiple offices, but must do quarterly reporting for each office

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## Duties of the Supervising Broker

B. Ensure training opportunities  
◦ Making sure all agents understand disclosures of licensee status



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## Duties of the Supervising Broker

C. Ensure the office has written policies and procedures that provide clear guidance in the following areas:



- 1. Handling of escrow deposits

<https://viriniarealtors.org/law-ethics/legal-resource-library/legal-articles/emd-and-safeguarding-the-public-legal-case-study-october-2020/>

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## Duties of the Supervising Broker

C. Office Policies & Procedures -

- 2. Comply with federal and state fair housing laws and regulations



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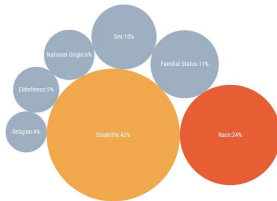
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## Virginia REB Analysis

Fair Housing Complaints by Protected Class



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## Duties of the Supervising Broker

- 3. Cont.,
  - Licensed / Unlicensed Activities



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## Duties of the Supervising Broker

- 3. Discussion Question - Licensed/Unlicensed Activities

The following REQUIRE a real estate license

- a. Showing property, holding an open house & recording earnest money deposits
- b. Showing property, negotiating a contract, assembling closing documents
- c. Showing property, holding an open house & negotiating a referral fee



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## Duties of the Supervising Broker

- 3. Discussion Question - Licensed/Unlicensed Activities

The following REQUIRE a real estate license

- a. Showing property, holding an open house & recording earnest money deposits
- b. Showing property, negotiating a contract, assembling closing documents
- c. Showing property, holding an open house & negotiating a referral fee



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## Why is this important?

### UNLICENSED ACTIVITY

\$335,100

Court-ordered victim restitution in DPOR-assisted criminal prosecutions

209

Criminal warrants obtained by DPOR for unlicensed activity

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## Duties of the Supervising Broker

- 4. Negotiating and drafting of contracts, leases and brokerage agreements



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## Duties of the Supervising Broker

- 5a. Disclosures: Create agency or independent contractor relationships

<https://virginiarealtors.org/law-ethics/legal-resource-library/legal-articles/failure-to-disclose-legal-case-study-august-2022/>

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## Duties of the Supervising Broker

- 5b. Disclosures: Disclose required information relating to the physical condition of real property

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## Duties of the Supervising Broker

**An agent in my office is selling his own home through the firm and has heard that he doesn't have to use the Owner/Agent sign. Are Owner/Agent signs still required?**

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## You are the Real Estate Board!

<https://virginiarealtors.org/law-ethics/legal-resource-library/legal-articles/disclosure-of-interest-legal-case-study-june-2022/>

<https://virginiarealtors.org/law-ethics/legal-resource-library/legal-articles/disclosure-of-interest-legal-case-study-october-2022/>



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## Duties of the Supervising Broker



- 6. Distributing information on new or amended laws or regulations

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## Duties of the Supervising Broker

- 7. Licensees possess a current license issued by the Board
  - Discussion Question: Licensee status
    - Is the Supervising Broker responsible if licensees do not renew their license prior to expiration?
      - Yes
      - No

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## Duties of the Supervising Broker

- 7. Licensees possess a current license issued by the Board
  - Discussion Question: Licensee status
    - Is the Supervising Broker responsible if licensees do not renew their license prior to expiration?
      - Yes & No

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## Licensing Status - Transfer

If an agent moves from one company to another and leaves pending deals, can the former broker legally pay the former agent directly on those deals when they close or does the payment have to flow through the new broker?

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## Duties of the Supervising Broker



### Discussion Question: Teams

1. Teams - Do teams have to obtain a business entity salesperson license through DPOR?
  - a. No. Obtaining a business entity salesperson license through DPOR is optional.
  - b. Yes. All teams must now obtain a business entity salesperson license through DPOR.

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## Duties of the Supervising Broker



### Discussion Question: Teams

1. Teams - Do teams have to obtain a business entity salesperson license through DPOR?
  - a. No. Obtaining a business entity salesperson license through DPOR is optional.
  - b. Yes. All teams must now obtain a business entity salesperson license through DPOR.

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## What is a Team?

Two or more individuals, one or more of whom is a real-estate salesperson or broker, who

- (i) work together as a unit within the same brokerage firm,
- (ii) represent themselves to the public as working together as one unit, and
- (iii) designate themselves by a fictitious name.



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## Team Advertising - Names

Avoid misleading consumers

Firm name must always be clearly and legibly displayed in all advertising

Avoid using confusing terms, such as realty, real estate, associates, partners, company, sales, limited, and properties.

Use of the terms "team" or "group" is less risky.

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## Team Compensation



Brokers may only pay licensees, whether individuals or entities.

So, if agents in your firm form a team with a business entity salesperson license from the Real Estate Board, the broker may pay the entity directly, and the team can disburse the funds according to their team agreement.

There is no requirement for the broker to pay the team directly, however, and brokers can also continue to pay the team members individually.

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## You are the Real Estate Board!



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## Duties of the Supervising Broker

- 8. Real estate teams MUST operate in accordance with the provisions of VREB.



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## Duties of the Supervising Broker

- 9. Brokerage agreements include the name and contact information of the supervising broker

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## 10. Duties of the Supervising Broker: Keeping Records

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How long do the Real Estate Board Regulations  
require my firm to keep documents?

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## Duties of the Supervising Broker

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- 10. Maintain records required by Chapter 21 of Title 54.1 for three years.

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## Duties of the Supervising Broker

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- Discussion Question:
  - How do Supervising Brokers know the activities of their agents?
    1. Contracts
    2. Agency Disclosures
    3. Escrow Deposits

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## You are the Real Estate Board!



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## Duties of the Supervising Broker - *Broker Self Audit*



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## Duties of the Supervising Broker

Renewal of a branch office license....provide the name and license number of each licensee to the Board....



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Why is this important?

REAL ESTATE RECOVERY FUND

\$54,800

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Dollar amount of claims paid  
\$34,800 in FY 2019  
\$20,000 in FY 2020

Number of claim payments  
4 prima facie cases  
0 IFF conferences

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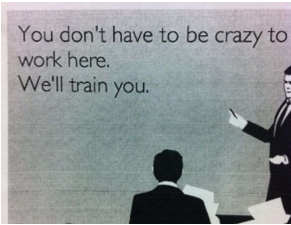
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You don't have to be crazy to work here. We'll train you.



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THE ONLY WAY TO DO GREAT WORK IS TO LOVE WHAT YOU DO

*Steve Jobs*



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