

TEAMS IN THE REAL ESTATE INDUSTRY

Summary: Industry members may wish to brand themselves as part of a “team” in their advertising and marketing strategies. RECA policies allow for this, but industry members must ensure that other identifiers (team names, etc.) are only included in advertisements in addition to the brokerage name. An industry member’s brokerage name must be clearly indicated in all advertisements. Teams must not hold themselves out as a brokerage if they are not licensed as such. [See: *Real Estate Act* s.1(x), s.17; *Real Estate Act Rules* s.13, s.44, s.49]

The concept of industry member “teams” has become increasingly common in Alberta. Industry members who work as part of a team are not typically themselves licensed as a brokerage, but they create their own administration that, in most situations, mimics the appearance of a brokerage in order to retain and service clients. As such, new relationships have evolved between brokers and team members, team leaders and team members, the team and unlicensed staff, and the team and consumers. With these new relationships comes the prospect of regulatory confusion from the team’s perspective, and confusion from the public as to with whom they are working and contracting.

The *Real Estate Act* Rules require that industry members trade only in the name that appears on their licence and in the name of the brokerage with which they are registered. However, industry members are allowed to include other identifiers (i.e. franchise names, team names, a branding name) in their advertisements. The ability of consumers and other industry members to easily identify an industry member’s brokerage remains extremely important to the notion of consumer protection and an industry member’s brokerage must be clearly indicated in all advertisements. For more information, see RECA *Information Bulletin: Advertising – Clearly Indicated*.

The issue of trading in real estate as part of a team is larger than advertising the fact you are a team. The core of the issue goes to whether the team is operating or trading in real estate as a brokerage by holding themselves out as a brokerage either through their advertisements or business practices. If a client is confused by the relationship they have with a team member or the brokerage, a number of issues can arise.

Teams are not to operate as brokerages within a brokerage. Should RECA investigators receive a complaint about a team or team member’s behaviour, one of the issues RECA will likely look into is whether the team is holding itself out as a brokerage.

Issues That May Arise from the Team Concept

1. Advertising.

The team concept can lead to a couple of areas of confusion with respect to advertising. Advertising a team name or a “brand” complies with legislation as long as that other identifier is in addition to a clearly indicated brokerage name. Typical advertisements for teams have a larger font for the team name and a much smaller font for the brokerage name; this may not meet legislative requirements if the brokerage name is not clearly indicated. Consumers may be confused by the relative dominance of the font used for the team name versus the brokerage name. It could be misleading if it is an attempt to create independence from the

brokerage and other members of the brokerage. Industry members should also avoid the use of identifiers in their branding efforts that people typically associate with brokerages, such as realty and real estate. See the RECA *Information Bulletin: Advertising – Clearly Indicated* for more information on this issue of team name vs. brokerage name in advertising.

To advertise that a potential client will be hiring an entire “team” for the same price as a single industry member is misleading because, in common law brokerages, a client always hires an entire brokerage, not a single team or individual industry member. Industry members are advised to remove such claims from their websites and other forms of advertising.

See RECA *Information Bulletins: Advertising – Licensed Name, Advertising – False Misleading, Advertising – Internet Guidelines* for more information.

2. *Public confusion.*

RECA has received complaints about teams conducting activities that are typically performed by a brokerage, such as having their own office, etc. It is clear to RECA investigators that in some situations members of the public have been led to believe or have been given the impression that the team leader is the broker. This concerns RECA because there is consumer confusion regarding lawsuits and who to turn to if a problem arises. It is important that consumers understands a team member’s relationship with a brokerage and the distinction that a team leader is not necessarily the broker.

3. *Problems with incentives and inducements*

Only a brokerage can offer incentives and inducements, and only if those incentives and inducements are offered by every industry member in that brokerage. A team cannot offer its own incentives and inducements to clients or potential clients. If a team offers to guarantee the sale of the home, it needs to be a brokerage incentive. As a result, all clients of the brokerage are entitled to the same incentive, regardless of the industry member with whom they are working. See RECA *Information Bulletin: Incentives* and RECA *Information Bulletin: Inducements* for more information.

4. *Problems with office management and supervision*

Brokers remain responsible for the actions of all industry members registered with their brokerage and all support staff, regardless of whether industry members or staff is associated with a specific “team” within the brokerage. Brokers may not absolve themselves of responsibility for team members and staff simply because a team has a separate office location or a distinct “brand.” A problem associated with this issue is when a broker does not have control over and access to trade and deal records from team members. Section 13 of the *Real Estate Act* Rules requires that all brokerage records be maintained at the brokerage’s registered business office.

Brokers can delegate brokerage authority in writing for supervision of the activities of the team to a team leader; however the broker is ultimately responsible for the actions of all persons acting on behalf of the brokerage.

In the case of a team maintaining a business office that is separate from the brokerage’s registered business office, records may be maintained in multiple offices if required for the purposes of facilitating trade activities from offices in various geographical locations. The broker must have access to all of these offices or locations. Where a separate office exists, the broker must have access and any records temporarily maintained in that office (i.e. pending deals) must be maintained in accordance with brokerage policy. For more information about record-keeping, see RECA *Information Bulletins: Records – Mortgage*

Brokerage, Records – Property Management, Records – Real Estate Appraisal, Records – Real Estate Brokerage.

5. Problems with unlicensed assistants

The broker may be completely unaware and uninvolved in the hiring and/or supervision of any assistants working for a team or an individual for that matter. The broker is responsible for the actions of all individuals acting/working on behalf of the brokerage. Brokers are responsible for ensuring industry members and unlicensed assistants, even if part of a team, comply with privacy provisions in section 44 of the *Real Estate Act* Rules. As a best practice, all staff and unlicensed assistants should be formally employed by the brokerage as opposed to being employed by an individual team leader.

6. Problems with commission flowing between associates of the team

If a “team leader” takes a portion of a commission from a team member’s transaction (i.e. acts like a broker) before processing a transaction through their brokerage, it is a violation of the *Real Estate Act*. Team leaders can receive a portion of a commission as the result of a team member’s transaction, but all transactions – and commissions to be paid – must be processed through the brokerage and only through the brokerage.

Also, only a brokerage can make payments, whether the payment is commission or referral fees. All payments must go through the brokerage, not the team, even though the team may have a separate public identity, separate offices and separate assistants.

7. Team members from different brokerages

Some teams have members that are registered with different brokerages. If a team chooses this model, all advertisements must have the name of the appropriate brokerages attached to each team member. If the buyer and seller brokerage agreements are not in all brokerage’s names, team members may only trade in real estate for the clients with which their brokerage has an agreement. Additionally, co-brokering agreements will need to be in place, and there will also need to be appropriate confidentiality and information-sharing agreements and complete explanations related to increased conflicts. Given the difficulty associated with co-brokering, industry members may want to think twice before working as part of a team with members from different brokerages. Brokers, as a matter of policy, may not wish to allow industry members registered with their brokerage to work as part of a team that contains industry members from multiple brokerages.

8. Bait and Switch Schemes

Consumers have complained to RECA about interviewing a team leader to determine if they will work with that individual on a real estate transaction. However, once the working agreement is signed, the client is shuffled off to another team member. This creates confusion for the client and a feeling of abandonment. It has been characterized by some as a bait and switch scheme. If the team leader does the initial interviews with a client or potential client, but will likely not be directly working with the client in the future, this should be clearly disclosed during the initial interview and preferably documented in writing.

Establishing a Team – Practice Tips

When establishing a team it is important that both the broker and the potential team members are involved to develop and understand the relationship between the brokerage and team members of the brokerage.

What does a broker have to be concerned about?

1. *Contract*

A contract between the brokerage and the team members should be in place to clearly identify, among other things, the roles and responsibilities of the respective parties, privacy issues with client and brokerage information, brokerage requirements for a team, policy and procedures of the brokerage, and any other contractual items.

2. *Relationship Between Brokerage and Team Members*

It is important for the broker to know how the team will operate within the brokerage, and to meet regularly to ensure the team is operating within the brokerage's policies and remains in compliance with appropriate legislation. It is important for team members to know that their relationship with the brokerage does not change because they are joining a team. The broker is responsible for managing and supervising team members as well as any other industry members and administrative staff of the brokerage.

3. *Record Keeping*

The brokerage alone continues to be responsible for all records that are required pursuant to the *Real Estate Act* and Rules, and those records are to be maintained at the business address provided to RECA through the brokerage application process. Brokers should make sure team members are aware that their relationship with the brokerage does not change because they are joining a team. All records must be provided to the brokerage in compliance with the brokerage policy and procedures.

4. *Advertising*

The brokerage must have an advertising policy in place to make the regulatory requirements of industry members advertising their product and services clear to team members. When developing a brokerage advertising policy, brokers are encouraged to consider RECA's advertising guidelines.

5. *Unlicensed Assistants*

The brokerage has requirements through real estate legislation and also through the *Personal Information Protection Act* and/or the *Personal Information Protection and Electronic Documents Act*, as the case may be, to maintain the confidentiality of a client's information. Access to client files is limited to the brokerage's industry member who is associated with the file, and administrative staff of the brokerage. If team members hire unlicensed assistants for the team, the broker should ensure that the brokerage policies with respect to confidentiality and privacy issues are followed. There may be liability for the brokerage for the activities of unlicensed assistants for unlicensed activity or other issues. The brokerage should have policies to cover these issues.

6. *Policies and Procedures*

A policies and procedures manual should be created for teams within a brokerage. This will help ensure the team will not act as a brokerage within a brokerage, and that they will follow all privacy, record keeping, advertising, complaint handling and any other requirements of the brokerage. Such a manual should include information on:

- Duties delegated to the team leader or team members, and that the delegated duties are communicated to all brokerage staff.
- Establishment of contractual arrangements with the team leader or team members.
- The guidelines and constraints associated with the operation of the team.

- Advertising guidelines to ensure that the brokerages name is clearly indicated, that advertisement is not misleading, the need for the team to notify the brokerage and provide access to all websites administered by the team on behalf of the brokerage.
- Prohibition of incentives and inducements that are not offered by the brokerage.
- Access by the broker or other broker delegate to team offices.
- Process for the hiring and supervision of unlicensed staff, including policies with respect to who is allowed to hire and terminate unlicensed staff, and whether an unlicensed assistant must be employed by the brokerage or may be formally employed by a team leader.
- The brokerage's privacy policy and process for compliance by the team and the team's unlicensed staff.
- Process for temporarily maintaining brokerage records and for the provision of all trade records to the brokerage.
- Process for dealing with public complaints or concerns.
- Process and formula under which the broker will share commissions generated by the team with team members.

What do team members need to be concerned about?

1. Trading in the name of the brokerage on the licence

Team members should always be cognizant of trading or dealing in the brokerage name indicated on their certificate of licence with the Real Estate Council of Alberta. Trading includes advertising a trade or a deal. The advertisements of the team cannot create the impression that the team is a brokerage.

2. Advertising

Teams should gain the approval of the broker for all advertising campaigns, including advertising that is website-based, and for any branding the team wishes to use.. It is the broker's responsibility to approve any advertising by associates in the brokerage, including teams.

3. Not creating the appearance of a brokerage

Team members should review all marketing materials and branding to ensure consumers will not confuse the team with the brokerage. Again, review marketing plans with your broker. When dealing with the public, it should be made clear that you are associates of a particular brokerage.

4. Unlicensed Assistants

The team should have very clear policies on the activities an unlicensed assistant may undertake and should clearly identify those activities that require an authorization pursuant to the *Real Estate Act*.

5. Relationship with the Brokerage

It is important for team members to understand that when they create a team within their brokerage their relationship with the brokerage will not change. They will continue to be associates within the brokerage named on their certificate of licence. Therefore, team members should not act any differently towards their brokerage or towards the public once they become a member of a team.