



Team Real Estate Revisited



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A Closer Look AT FAQs Regarding Teams

It is the dream of many REALTORS® to have their own real estate team. “Just think,” said one REALTOR® friend of mine, “I could actually spend more weekend time with my family because I’d have a member

of the team showing properties.” Another talked about the increased revenue they’d earn from having an income stream from multiple team members. While teams remain the dream of many REALTORS®, as with many things, running a team can be easier said than done. Let’s take a closer look at some of the more common questions that get asked regarding real estate teams.

{1} Did the Georgia Real Estate Commission (“GREC”) adopt any special rules regarding real estate teams?

While GREC adopted some proposed rules regarding teams, they were never ultimately approved by the governor and did not go into effect. As a result, there are no special state regulations dealing with teams.

{2} Can real estate contracts be signed in the name of the team?

The answer to this question is no. GREC has made it clear that contracts must be signed exactly as the licensee’s name appears on the contract. This requirement comes from O.C.G.A. § 43-40-7 which requires licensees to file an application for a license in the “name and address ... under which he or she intends to conduct business...”. GREC has interpreted this section to require that licensees sign contracts in the name in which their license was issued.

{3} Can different members of a team represent both sides of a transaction as designated agents?

The answer to this question is yes. However, each team member has a duty to exclusively represent their respective client and not disclose, except to their broker, information made confidential by the client. This means that one team member absolutely must not disclose confidential information to another team member representing the other client (except as may be otherwise required under state law). For example, if a buyer client tells her designated agent that she might offer as much as \$485,000 for a property, the designated agent representing the buyer cannot disclose this information to another team member who is the designated agent for the seller. However, if a seller were to tell the seller’s agent about a latent defect in the property, the agent would be required to disclose this information to buyers under state law even if the seller asked the agent to keep this information confidential.

{4} What are the different models for real estate teams?

There is no end to the different ways in which real estate teams can be organized. Usually, the two key questions are whether the team {1} is large or small, and {2} is organized around a star REALTOR(S)® or

is composed of multiple licensees each of whom are more or less equal partners. The most common real estate team seems to be the “star REALTOR® model,” where all of the other team members are performing tasks to further the success of a star REALTORS®. The other key question is whether all team members are basically doing the same tasks or whether there is specialization on a team. For example, some teams may have certain agents act exclusively as buyer agents or listing agents. Specialization can also be organized around tasks such as marketing or contract preparation and compliance.

{5} What key issues should be addressed in an agreement between the team leader and team members?

The issues that should be addressed in an agreement between the team leader and the team members are the same issues that are typically addressed in an agreement between a broker and an agent. My big three include the following:

a. How will a team member be compensated if the team member leaves or is terminated from the team?

Compensation is usually the number one area of dispute if a team member leaves a team or is terminated. If the team is headed by a star REALTOR®, the team member leaving the team is normally either not compensated at all if they leave or is compensated at a reduced level for pending transactions that have not yet closed. Who decides disputes over compensation is also normally addressed in an agreement between the team leader and team members, with the team leader being the decision maker.

b. Should team members be independent contractors or employees?

While some REALTORS® assume that all team members should be independent contractors if they themselves are independent contractors, this could prove to be a costly mistake. REALTORS® performing traditional brokerage functions have long been held to be self-employed and thus, independent contractors of the broker. However, whether someone working for a team is ultimately treated as an independent contractor or an employee has little to do with whether they signed an independent contractor agreement with the team or received a 1099. Instead, the key factors are whether the team member:

- i.** *decides when and how the work will be done;*
- ii.** *uses their own materials, tools and equipment;*
- iii.** *decides what work they do or is assigned the work to be performed;*
- iv.** *works for one employer or multiple clients;*
- v.** *are paid hourly or receives salary rather than being paid upon the completion of the work; and*
- vi.** *whether they are running their own business or working for someone else's business.*

The factors and tests for whether someone is an independent contractor or employee is an evolving area with new regulations regularly being considered by various federal agencies. Nevertheless, employees are entitled to be paid minimum wage and receive time and a half for hours worked over 40. Workers can assert claims for back pay and overtime if they are called independent contractors but are later found to be employees.

c. Should the agreement between a team member and a team leader include a non-compete?

Non-compete agreements are increasingly common in agreements between team members and team leaders. Since these agreements can limit the ability of a REALTOR® to practice in a given area for an extended period of time, they should be carefully reviewed before they are signed.

Who decides disputes over compensation?



Teams have a legitimate interest in protecting their businesses when members leave. However, a more balanced approach between the interests of the team headed by a star REALTOR® and the departing member is to prohibit the departing member from having any contact with anyone the team represented either in a client or customer capacity. In cases where the team members are more equal partners, non-competes are normally not used and when the team breaks up, each team member normally takes the business that the member brought to the team.

{6} What should brokers be thinking about in supervising teams who are affiliated with the broker?

Brokers owe the same duties toward team members that they do toward other agents in their companies. If the team has any unlicensed support personnel, the broker needs to make sure that such unlicensed persons are not performing brokerage activities, but are only performing the duties of an unlicensed assistant (as set forth in GREC Sub. Reg. 520-1-.07(6)). The broker must also ensure that the team enter into a written agreement with all unlicensed support personnel that specifies the duties of the support personnel as well as the tasks the unlicensed personnel can and cannot perform.

The broker must also approve the compensation arrangement that the affiliated licensee has with the support personnel and generally authorize agents to hire unlicensed support personnel. Brokers are not permitted to share their commissions with unlicensed persons for performing the services of a real estate licensee. To be safe, it is better for the broker to approve a compensation plan for unlicensed support personnel that is either a fixed salary or a fixed hourly wage and not allow such support personnel to be compensated based on a percentage of the commission paid to the team.

While brokers must confirm that unlicensed support personnel have such a written agreement with the team, it is frankly a good idea for the broker to ensure that every team member, whether they are licensed or not, has a clearly written agreement with the team. This will help prevent the broker from having to referee disputes between team members when there is little to guide the broker on how to resolve the dispute.

{7} Should teams be required to make special disclosures regarding their status as a team?

When I talk with consumers about whether they would want to know if agents belong to a team, they often look mystified and ask why the question is even being asked. As one seller responded, “What’s the difference between two agents working for the same brokerage firm or the same team within a brokerage firm?” “Either way, there is going to be a relationship between the two agents.” However, when I ask whether they would want to know if the agent for the buyer is married to the agent for the seller, they often do express concerns and worry whether their confidential information will be shared. This, alone, makes me recommend that agents on the same team with a material relationship with one another who are acting in a designated agency capacity disclose the material relationship to their respective clients. A disclosure similar to the following should help to avoid issues in this area.

“Buyer and seller understand and acknowledge that the designated agents in this transaction have the following material relationship with one another:



That’s normally addressed in an agreement between the team leader and team members, with the team leader being the decision maker.

[**EXAMPLE 1:** The designated agents are on the same real estate team and are husband and wife OR **EXAMPLE 2:** The designated agents are on the same real estate team and are mother and daughter].

Each designated agent agrees to exclusively represent the interest of the client with whom they are working and shall keep all information confidential that they are requested in writing to keep confidential (except for information that each agent is required to disclose under state law, such as the disclosure of known latent defects)."

Whether such a disclosure is required or just advisable is a bit unclear. Brokers representing sellers must disclose "material facts of which the broker has actual knowledge concerning the transaction" (O.C.G.A. § 10-6A-5(a)(C)). Similarly, brokers representing buyers must disclose to the buyer "adverse material facts of which the broker has actual knowledge concerning the transaction" (O.C.G.A. § 10-6A-7(C)). Is it a material fact or an adverse material fact that the two designated agents representing their respective clients have a material relationship? Since the answer is quite possibly yes, the safe approach is to take the position that such information is material and potentially adverse and to disclose the material relationship to the parties.

{8} If the team organizes itself as a limited liability company or a corporation, can the broker pay real estate commissions to the company rather than to individual agents?

The answer to this question is yes. Technically, the company is not performing real estate brokerage activity and instead the brokerage activity is being performed at an agent level. License law allows a brokerage firm holding a licensee's license to pay commissions to an unlicensed firm in which an individual licensee is affiliated if the licensee owns more than a twenty percent interest in the unlicensed firm provided that:

- i. Such individual licensee earned the commission on behalf of the brokerage firm;
- ii. Such unlicensed firm does not perform real estate brokerage activity;
- iii. The affiliated licensee and the brokerage firm have a written agreement authorizing the payment to the unlicensed firm; and

- iv. The brokerage firm obtains and retains written evidence that the affiliated licensee owns more than a twenty percent (20%) interest in the unlicensed firm to which the compensation will be paid.

In conclusion, real estate teams are likely going to continue to grow as licensees try to leverage themselves to achieve greater levels of success. Of course, with greater leverage and success comes greater responsibility on the part of the team leader(s). Hopefully, this article will help make the transition to running a team a bit easier.

A clearly written agreement with your real estate team will help prevent the broker from having to referee a dispute between team members when there is little to guide the broker on how to resolve the dispute.

