"MREC Broker Supervision"

(MD Course #[illegible]-2634-I)

"Supervision-Reasonable & Adequate"

(DC Course #[illegible])

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COURSE OUTLINE

SUPERVISION

BROKERS, BRANCH OFFICE MANAGERS, TEAM LEADERS

I. Supervision Duties of Brokers, Managers and Team Leaders

A. Requirements of Maryland Real Estate Brokers Act

(c) (1) A real estate broker shall exercise reasonable and adequate supervision over the provision of real estate brokerage services by any other individual, including an independent contractor, on behalf of the broker.

(2) The requirement of paragraph (1) of this subsection applies regardless of the manner in which the individual who provides the services is affiliated with the real estate broker on whose behalf the services are provided.

(d) (1) A branch office manager, as defined in § 17-518(d) of this title shall exercise reasonable and adequate supervision over the provision of real estate brokerage services by any sales agent or associate broker registered with that office.

(2) The responsibility of the branch office manager to supervise sales agents and associate brokers registered to his/her office is in addition to, and not in lieu of, the responsibility of the broker set forth in subsection © of this section.

B. Failure to Provide Reasonable and Adequate Supervision

Section 17-322

(b) subject to the hearing provisions of § 17-324 of this subtitle, the Commission may reprimand any licensee, or suspend or revoke a license if the licensee:

(27) violates § 17-320(c) of this subtitle by failing as a real estate broker to exercise reasonable and adequate supervision over the provision of real estate brokerage services by another individual on behalf of the broker;

(c) (1) Instead of or in addition to reprimanding a licensee or suspending or revoking a license under this section, the Commission may impose a penalty not exceeding $5,000 for each violation.

II. Provision of Real Estate Brokerage Services Through a Team

Section 17-543 "Team" defined

In this Part V of this subtitle "team" means two or more licensed associate real estate brokers or licensed real estate salespersons, or any combination of licensed associate real estate brokers or licensed salespersons who:

(1) Work together on a regular basis to provide real estate brokerage services

(2) Represent themselves to the public as being part of one entity; and

(3) Designate themselves by a collective name such as team or group.

Section 17-544 Team Leader; duties; lists

(a) Team Leader – Each team shall designate a team leader who shall be
  (1) a licensed associate real estate broker or
  (2) a licensed real estate salesperson who has at least 3 years of experience in providing real estate brokerage services.

(b) Duties – The Team Leader shall:
  (1) maintain a current list of all members and employees of the team; and
  (2) provide the list and any revisions to the broker or the branch office manager of the brokerage with which the licensees are affiliated.

(c) Lists – The real estate broker or branch office manager of a real estate broker shall:
  (1) Maintain copies of the lists and
  (2) Make the copies available to the Commission on request.

III. Supervision

Section 17-322

(b) Subject to the hearing provisions of §17-320(c) of this subtitle by failing as a real estate broker to exercise reasonable and adequate supervision over the provision of real estate brokerage services by another individual on behalf of the broker,

(c) (1) Instead of or in addition to reprimanding a licensee or suspending or revoking a license under this section, the Commission may impose a penalty not exceeding $5,000 for each violation.

Section 17-545 Supervision: adherence to rules, practices and procedures

(a) Supervision – The team leader shall exercise reasonable and adequate supervision over the provision of real estate brokerage services by members of the team.

(b) Additional Responsibilities – The responsibility of the team leader to supervise the associate real estate brokers and real estate salespersons on the team shall be in addition to the supervision responsibilities of the real estate broker and branch office manager of the real estate broker provided for in § 17-320 of this title.

(c) Adherence to rules, practices and procedures – The team leader and the members

of the team shall adhere to all office rules, practices, and procedures established by the real estate broker and the branch office manager of the real estate broker.

Section 17-546 – Intra-company agents - A real estate broker may designate two members of a team as intra-company agents for the seller and the buyer in the same transaction if the parties have first been advised in writing that the licensees are part of the same team and the team could have a financial interest in the outcome of the transaction

Section 17-547 – Name; advertising; connection to name of brokerage

(a) Name – The name of the team may not contain the terms "real estate", "real estate brokerage", or any other term that would lead the public to believe that the team is offering real estate brokerage services independent of the real estate broker.
(b) Advertising – All Advertising by the team must contain:
    (1) the name of the brokerage displayed in a meaningful and conspicuous way;
    (2) the name of at least one of the licensee members of the team; and
    (3) the telephone number of the real estate broker or branch office manager of the real estate broker
(c) Connection to name of brokerage – The team name in the advertisement MUST be directly connected to the name of the brokerage.

Section 17-548 – Conducting of real estate brokerage activities

Team members must conduct all real estate brokerage activities from the office or branch office where their licenses are displayed as provided in § 17-317 of this title.

Commission Regulations as to Supervision 9.11.

.01 Definitions

Supervision means direction and review by the

A. Broker of professional real estate activities by associate brokers, designated sales managers and salesperson associated with that brokerage, regardless of the type of work relationship existing between them.

B. Broker of the supervision activities of each branch office manager and

C. Branch office manager of professional real estate activities by the associate brokers and salespersons registered with the office.

D. Brokers and Branch Office Managers over Teams and Team Leaders

.02 Requirements of Supervision

A. A broker shall exercise reasonable and adequate supervision over the activities of the broker's associate brokers and salespersons and teams.

B. A branch office manager shall exercise reasonable and adequate supervision over the activities of the associate brokers and salesperson registered with that office as well as the Teams registered at that office made up of associate brokers and salespersons.

C. The exercise of reasonable and adequate supervision as defined in this chapter may not be construed or deemed to create an employer/employee relationship between the broker and licensed associate brokers and licensed salespersons under the broker's supervision or to alter the status of an individual as an independent contractor.

.03 Reasonable and Adequate Supervision

A. Initially, the operations characteristics of the brokerage firm shall be considered by determining the:

(1) Number of licensed salespersons and associate brokers affiliated with the broker;

(2) Number of branch offices and salespersons assigned to each office;

(3) Number of management personnel in each office;

(4) Normal and routine working days and hours of the broker and management personnel;

(5) Type of real estate activities of the firm.

B. Factors to be considered in determining whether supervision is reasonable and adequate include but are not limited to, the following:

(1) Availability of

(a) training or education sessions held regularly at least once every two months;

(b) experienced supervisor personnel to review and discuss:
(i) Contract provisions;
(ii) Brokerage agreement provisions; and
(iii) Advertising

(c) Written procedures and policies which provide clear guidance in the following areas:

(i) Proper handling of deposit monies and other funds in accordance with Business and Occupations Professions Article, § § 17-501-17-508, Annotated Code of MD.

(ii) Compliance with federal, state and local fair housing laws and regulations;

(iii) Advertisement requirements applicable to real estate transactions and real estate teams.

(iv) Review of contracts, leases and brokerage agreements upon execution by all parties to the contract, lease or brokerage agreement.

(v) Use and limitations of unlicensed personal assistants

(vi) Disclosure of agency relationships by licensees in a residential real estate transaction

(vii) Distribution and dissemination of information on new or changed requirements in real estate laws and regulations enacted by local, State and federal governments and regulatory agencies.

(viii) The obligation of all licensees to comply with all applicable provisions of Business Occupations and Professions Article, Title 17, Annotated Code of Maryland (the Maryland Real Estate B rockers Act), the Code of Ethics as adopted and amended from time to time by the Commission and all applicable local, state and federal laws and regulations;

(ix) Requirements, restrictions, and limitations applicable to the sale or lease of real property personally owned by a licensee and the purchase or lease of real property by a licensee for the licensee's personal use; and

(x) The unauthorized practice of law by a licensee; and

(2) Evidence of:

(a) Records of attendance at sales meetings;

(b) Review by the broker, branch office manager, team leader or designee of the broker or branch office manager (licensed assistant) of contracts of sale, leases, and brokerage agreements executed by all parties to the contract, lease, or brokerage agreement. This review should include but is not limited to terms of contract, signatures, completion of all required areas, review of agency terms, etc.

(c) Review by the broker, branch office manager, team leader, or designee of the branch office manager or broker of advertisements **to be placed (prior to)** by licensees affiliated with the broker; (emphasis added)

(d) Compliance with the written policies and procedures as specified in § B (1)(c) of this regulation; and

(e) Dissemination of the written policies and procedures as specified in § B(1)(c) of this regulation to licensees affiliated with the broker.

C. On a showing that the broker, branch office manager and team leader have not provided reasonable and adequate supervision in the areas under § B of this regulation, the burden of proof shall be on the broker to show that the supervision which the broker did provide was reasonable and adequate.

IV. Special Issues

A. Required Written Policies

B. Records of Attendance
1. Sign in sheet
2. Notices of Sales Meetings
3. Hand Outs
4. Sales Meeting Agendas
5. Retain Sign In Sheets, Agendas and Hand-Outs
6. Special issue re – licensees who regularly fail to attend scheduled sales meetings

C. Review of Advertisements

1. Maryland Real Estate Brokers Act

(a) (1) in this section the following words have the meanings indicated

(2) Advertise means the use of any oral, written or visual advertisement by a licensed real estate salesperson, licensed real estate broker, licensed associate real estate broker, or other person on behalf of a licensed real estate salesperson, licensed real estate broker, or licensed associate real estate broker.

(3) Advertisement means, unless the context requires otherwise, any oral, written, audio, visual or printed media advertisement.

(ii) Advertisement includes any correspondence, mailings, newsletter, brochure, business card, for sale or for lease sign and sign rider, promotional item, automobile signage, telephone directory listing, television announcement, radio announcement, telephone solicitation, and World Wide Web and internet voice overs.

(4) Designated name means the individual name of a licensed real estate person, licensed real estate broker, or licensed associate real estate broker other than the licensed real estate salesperson, associate broker or broker's full legal name (Nickname).

(ii) Designated name includes a first name, nickname, or last name – it does not include all three

(a) a licensed real estate salesperson, licensed real estate broker, or licensed associate real estate broker may not advertise unless:

(1) the name or designated name of the licensed real estate salesperson, licensed real estate broker, or licensed associate real estate broker, as the name or designated name appears on the license certificate and pocket card issued by the Commission, is meaningfully and conspicuously included in the advertisement; and

(2) the name of the business with which the licensed real estate salesperson, broker or associate broker and any team member is affiliated:

(i) is meaningfully and conspicuously included in the advertisement; and
(ii) is the full name of the business and not a logo used by the business.

(3) Advertisement means, unless the context requires otherwise, any oral, written, audio, visual or printed media advertisement.

(1) Advertisement includes any correspondence, mailings, newsletter, brochure, business card, for sale or for lease sign and sign rider, promotional item, automobile signage, telephone directory listing, television announcement, radio announcement, telephone solicitation, and World Wide Web and internet voice overs

(b) a licensed real estate salesperson, licensed real estate broker, or licensed associate real estate broker may provide real estate brokerage services under a designated name (nickname) that has been approved by the Commission.

(c) subject to the approval of the Commission, a licensed real estate salesperson, licensed real estate broker, or licensed associate real estate broker may add a designated name (nickname) on a license certificate and pocket card if the licensee submits to the Commission

(1) An application,
(2) Legal documents if necessary
(3) a fee of $25.00

(d) the full legal name of the licensee and the approved designated name shall be displayed on the new license certificate and pocket card.

2. Code of Ethics – Maryland Real Estate commission

G. Advertisement
1. Present a true picture in advertising
2. must disclose broker's name or the company name as it appears on the license

3. broker may not permit associate brokers or salesperson to use individual names unless the connection with the broker is obvious in the advertisement.
4. Effective 10/1/04 an associate broker and salesperson may not use an individual Email address or phone number unless the identified telephone number of the broker or branch office manager is also in the advertisement.

3. Regulation of Maryland Real Estate Commission

A. For the purpose of this regulation the following terms have the meanings indicated:

B. Definitions.

1. Advertise means the use of any oral, written or visual advertisement by a licensed real estate salesperson, licensed real estate broker, licensed associate real estate broker, or other person on behalf of a licensed real estate salesperson, licensed real estate broker, or licensed associate real estate broker

2. Advertisement includes any correspondence, mailings, newsletter, brochure, business card, for sale or for lease sign and sign rider, promotional item, automobile signage, telephone directory listing, television announcement, radio announcement, telephone solicitation, and World Wide Web and internet voice-overs.

3. Licensee means a real estate broker, associate broker, or salesperson licensed by the Real Estate commission.

4. Trade name means trademark or service mark, company name or business name, irrespective of whether the licensee needs to obtain permission from another person or entity who has an existing or continuing right in that trademark or service mark by virtue of any State or federal law.

C. Licensee Using Trade Name.

1. In the advertising of or contracting for any real estate brokerage services defined under Business Occupations & Professions Article, § 17-101, ACM, a licensee using a trade name shall clearly and unmistakably include in the advertisement or contract his name or trade name, as registered with the Commission to insure that his identity is meaningfully and conspicuously displayed to members

2. A licensee using a trade name on a for sale sign, business card, office sign, sales contract, listing contract or other document relating to real estate activities as defined under Business Occupations and Professions Article, § 17-101, Annotated Code of Maryland, shall clearly and unmistakably include on any of these documents his name, or trade name, as registered with the Commission.

3. Any licensee who is in the course of oral communication with another person (whether in person or by telephone), shall clearly and unmistakably include in the communication his name, or trade name, as registered with the Commission, to insure that his identity is meaningfully and conspicuously made known to that person.

4. An Associate Broker or Salesperson may use a "tradename" for the purposes of meeting certain tax laws but MAY NOT use that trade name in the practice of real estate. They must use the trade name of the Broker.

D. Payment of Commission to Professional Service Corporation 17-512

(a) With the consent of a licensed real estate broker, one or more licensed real estate Salesperson's and licensed associate brokers who are affiliated with the licensed real estate broker may:

(1) organize and wholly own a professional service corporation under the Maryland Professional Service Corporation Act; or

(2) form a limited liability company under the Maryland Limited Liability Company Act.

(b) it can be formed by any number and any combination of licensed real estate salespersons and associate brokers. HOWEVER, each shareholder in the corporation or member of the LLC shall be either a licensed salesperson or associate broker.

(c) a member of the LLC or PSC can direct their broker to pay any commissions due the salesperson or associate broker be paid to the corporation or limited liability company.

E. Payment of Commission to an Attorney – 17-605

(a) (1) Except as otherwise provided in subsection (b) of this section, a real estate broker, associate broker or salesperson may not pay or offer to pay a commission to a lawyer simply for the referral of a person as a possible party to a residential real estate transaction.

(2)A real estate broker, associate broker, or real estate salesperson may not solicit referral business from lawyers by a mass solicitation that offers to pay fees or commissions to the lawyers.

(b)Subsection(a)(1) does notprohibit payments or offers of payments to lawyers who hold a real estate broker's license under this title or are otherwise entitled to a commission.

(c) Other than the commissions expressly prohibited, subsection(a) does not prohibit the payment or the offer of payment of a commission by a real estate broker, associate broker or salesperson to a lawyer for any service that relates to a real estate transaction.

F. Payment of Referral Fees: A real estate broker, associate broker or salesperson may not pay compensation in any form for the provision of real estate brokerage services to any person who is not licensed under this title. (Unlicensed assistants, neighbors, friends, secretary)

G. Payment of Rebates to Buyers/Seller Section 17-322(b)(9) provides that a licensee may not use a prize or lottery to influence or attempt to influence an individual in the sale of real estate. Section 17-604(a) provides that a licensee may not pay compensation, in any form, for the provision of real estate brokerage services to any person who is not licensed.

There have been several advice letters and a published AG's Opinion issued with regard to what constitutes a prize or lottery. The remaining question for the purposes of determining the application of § 17-322(b)(9) is whether they are offered to influence or attempt to influence the sale of property. The language that begins this subsection provides that the Commission may discipline a licensee who "solicits, sells, or offers to sell real property, so as to influence or attempt to influence a prospective party" by offering a prize or a free lot or by conducting a lottery or contest. Thus, the lottery or prize must be tied to the potential sale of the property.

H. Disposition of Deposit Monies

a. If broker is holding – must be deposited within 7 business days of contract acceptance.
b. Verify that check cleared with other broker or the deposit holder and proof thereof
c. 3rd party holding money – lose control and must put more emphasis on verifying deposit of and sufficient funds. No control by commission over outside parties
d. Owe responsibility to buyer or seller to make sure deposit is secure
e. Cannot hold deposit hostage due to other terms of a listing agreement.
f. Can release deposit under HOA and Condominium Act without a release if all terms are properly met.

I. Buyers Right to Select Settlement Service Provider 17-607

(a) Except as otherwise provided in subsection be of this section, in a real estate transaction involving a single family dwelling, a real estate broker, an associate real estate broker, a real estate salesperson or a lawyer acting a a real estate broker may not require a buyer, as a condition of settlement, to employ a particular
(1) title insurance company;
(2) settlement company;
(3) escrow company
(4) mortgage lender or financial institution as defined in the Financial Institutions Article;
or
(5) title lawyer

(b) A seller may NOT be prohibited from offering owner financing as a condition of settlement.

J. Verifying that the office files have all of the related documents to the transaction in it.
   a. All Addenda, home inspections, well tests, etc. The office file must be complete.
   b. Retaining the files for five years from last activity.

K. Balancing checkbooks – Escrow account must match up with contracts and settlements.

L. Making sure that everyone's license is active and not expired – Broker/Branch Office Manager/Team leader held responsible if some works with an expired license.

M. Terminating properly – doing the right paperwork for the Commission.
   a. License Change Form
   b. Letter to Licensee stating that you are returning license to commission must be sent to the licensee and a copy attached to license Change Form
   c. Send Form and copy of letter with Wall License to Commission.

N. Referral Companies –
   1. No such license category as a referral license
   2. Must have an active license
   3. Must complete C.E. for renewal

O. Inactive Status
   1. Must renew to remain inactive
   2. Must complete c.e. before reactivating
   3. Maximum of four years on inactive from date of going inactive (not renewal date)
   4. Must take all c.e. (maximum 45 hours). Cannot take same class from the same provider (school- not teacher)

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