

## *Supervision for Brokers, Managers, & Team Leaders*

### **STATUTORY REQUIREMENT**

- **PRIOR** law required MREC Supervision course every 4 years.
- **Effective October 1, 2015:** Supervision is required for **all license renewals – every 2 years** for Brokers, Managers and Team Leaders.

## Handout #1

### Continuing Education Requirements - Real Estate Commission

Continuing Education Requirements for all licensees whose **CURRENT license expires ON or AFTER 10/1/2015**

#### SALESPERSONS AND ASSOCIATE BROKERS

##### **RESIDENTIAL** Salespersons and Associate Brokers

• 15 hours which includes 3.0 legislative, 3.0 MREC Agency-residential, 3.0 ethics, 1.5 fair housing (required classes); the remaining 4.5 hours are electives

##### **Commercial Designation (SOLELY - NO RESIDENTIAL BUSINESS)** Salespersons and Assoc. Brokers

• 15 hours which includes 3.0 legislative, 3.0 MREC Agency – commercial, 3.0 ethics (required classes); the remaining 6.0 hours are electives

#### BROKERS AND DESIGNATED BRANCH OFFICE MANAGERS OR TEAM LEADERS

##### **RESIDENTIAL** Brokers, Branch Office Managers or Team Leaders

• 15 hours which includes 3.0 legislative, 3.0 MREC Agency-residential, 3.0 ethics, 3.0 supervision, 1.5 fair housing (required classes); the remaining 1.5 hours are electives

##### **Commercial Designation (SOLELY - NO RESIDENTIAL BUSINESS)** Brokers, Branch Managers or Team leaders

• 15 hours which includes 3.0 legislative, 3.0 MREC Agency – commercial, 3.0 ethics, 3.0 supervision (required classes); the remaining 3.0 hours are electives

<http://www.dlr.maryland.gov/license/mrec/mreceducregafter.shtml>

## *Statutory Requirements*

- New Brokers, Managers and Team Leaders must take MREC Supervision within **90 days** of becoming either a broker, manager or team leader.
- **Notify the Commission by email** if you have become a Team Leader so that the commission may mark the licensing record accordingly.

Send email to: [d1mrec-d1lr@maryland.gov](mailto:d1mrec-d1lr@maryland.gov)

## *Reasonable & Adequate Supervision*

- Broker supervision applies to **Salespersons, Associate Brokers, Office Managers, and unlicensed support staff.**
  - Includes Independent Contractors covered under Sec. 17-320
  - Include Team Leaders and Team Members

## *Reasonable & Adequate Supervision by Branch Office Manager*

- Supervision applies to all salespersons, associate brokers, unlicensed support staff under the branch office manager.
- Includes Independent Contractors
- Includes Teams and Team Members registered with that office.
- **This is In addition to, NOT IN LIEU OF, the responsibility of broker.**

*Reasonable & Adequate Supervision  
by Team Leader*

- Team Leader is responsible for supervision of team.
- Team Leader supervision is in addition to, **NOT IN LIEU OF** the supervision of broker and manager.

*Do You Know What  
Your Agents Are Doing?*

*Do you know what your agents are doing?*

- **Property Management** – not through broker -- should have something in your Policies and Procedures.
- **Accepting retainers** or having clients make checks out to them instead of brokerage.

*Do you know what your agents are doing?*

- **Groupon/coupons** – what happens to that money? Agent is getting money directly and broker is not aware of it.
- **Referring business** to related family members and not disclosing relationships. Written disclosure suggested.

*Do you know what your agents are doing?*

- **Open House Activities** -- sitting on another broker's open house.
- **There is a company requesting licensees**, for a fee, to unlock house, meet home inspector, meet appraiser, etc. Each for a separate fee. Must have a second license with this brokerage.

*Do you know what your agents are doing?*

- **Referring business** to specific vendors where there is a financial benefit to the licensee or their family that is not being disclosed. Some licensees are influencing buyers and sellers on this without full disclosure.

*Do you know what your agents are doing?*

- **Working for builder** as employee versus listing agreement through broker for marketing; i.e., sitting at model home without agreement. Who do they represent?

*Do you know what your agents are doing?*

- **Lotteries and games of chance** allowed but have to follow the guidelines.
- **Using outdated or unapproved (self-made) forms** -- practicing law without a license.

*Do you know what your agents are doing?*

- **Rehabbing their own properties** and listing them through your brokerage. Many complaints regarding this -- using non-licensed trades people and not pulling proper permits.

*Independent Contractors*



## *Independent Contractor*

- Exercise of Supervision **does not change independent contractor status.**
- Statutory Independent Contractor:
  - Falls under the Federal Tax Rule
  - Licensed Real Estate Salesperson/Assoc. Broker
  - Income Related to Sales, not Hours
  - Written Independent Contractor Agreement

## *Independent Contractor*

- Status is not assumed. **Must be in writing.**
- Every broker should have an **independent contractor agreement with each agent.** It is not mandatory just good business sense.
- It should call out what they **can and cannot do.**

## *Independent Contractor*

- Handling **funds**
- Broker **approved activities**
- Broker **unapproved activities**
- **Team guidelines** and responsibilities

## *Independent Contractor*

- Refer to a **Policies and Procedures Manual**.
- Specifically state there is **no employment relationship**.
- **Attach a Commission Schedule** to avoid litigation and any misinterpretation of your agreement. *(This is a suggestion only: due to the number of complaints about commission disputes the REC receives)*

# Teams

**Commissioner Corner** KATHERINE CONNELLY



## Commission Housekeeping Issues

To help us provide outstanding service, the Commissioners and staff of the Real Estate Commission have a few simple suggestions and reminders to ensure that business receives the important information we need and to reduce the number of consumer complaints that lead to disciplinary action.

**UPDATE EMAIL ADDRESS.** The easiest step a business can take is to ensure the Commission has your up-to-date email address. It's particularly important that brokers maintain a current email address with the Commission. Many businesses have recently received from an MRES email in another printer and simply sent out a "Change of address" email. Unfortunately, the Commission staff is not able to manually update the database every time we receive an electronic change of address notice. An example of the consequences of this issue is a recent email the Commission sent to brokers with the most recent agency disclosure form, "Understanding Whom You Estate Agents Represent." More than 300 emails bounced back.

To update your email address, please visit our website at <http://www.mdrealtor.org>. If you have trouble logging in to your account, scroll down the page and click on "Forgot password." If you need assistance, please give us a call or email us at [info@mdrealtor.org](mailto:info@mdrealtor.org).

**TEAMS AND GROUPS.** The second issue about which the Commission believes licensees should be reminded is teams and groups. We find that real estate teams are often forgetting three important requirements: brokers must be informed when a new team leader is designated and the new team leader must take the supervision continuing education course within 90 days of the designation. Also, the broker needs to let the Commission know who is a team leader so that we may put that designation in their licensing record and track education requirements. We recommend that brokers establish a schedule to periodically check with team leaders affiliated with their brokerage to ensure that the broker knows who is the current leader and that the supervision course was taken in a timely fashion.

**ADVERTISING.** The last issue is a reminder concerning real estate brokerage advertisements. The Commission monitors newspapers, mailers and other advertisement platforms to ensure compliance with the basic rules for real estate advertisements. Often we find the advertisements are significantly deficient, lacking the brokers name, broker phone number and sometimes the team name does not reflect a connection to the brokerage or include a name for a member of the team (if team name does not reflect a broker's name). The Commission has preferred to address these deficiencies by sending warning letters and requesting corrective action. Unfortunately, after several years relying upon warning letters, we still see a great many advertising violations.

The Commission plans an enforcement effort and sanctions for agents and brokers who fail to comply. We urge all licensees to review the signs, advertisements and promotional materials used by your business. Make sure the basic rules are observed by providing the name and phone number of your broker and all team names must be connected to the name of the brokerage.

**As always, if you have any questions concerning these issues, please feel free to contact me at [kath.k.connelly@maryland.gov](mailto:kath.k.connelly@maryland.gov).**

Katherine Connelly is the Executive Director of the Maryland Real Estate Commission.

32 MARYLAND REALTOR • OCTOBER/NOVEMBER 2012 [www.mdrealtor.org](http://www.mdrealtor.org)

<http://www.mdrealtor.org/Publications/Publications/MD-REALTOR-Magazine>

## Handout #2

**TEAMS AND GROUPS:** The second issue about which the Commission believes licensees should be reminded is teams and groups. We find that real estate teams are often forgetting three important requirements: brokers must be informed when a new team leader is designated and the new team leader must take the supervision continuing education course within 90 days of the designation. Also, the broker needs to let the Commission know who is a team leader so that we may put that designation in their licensing record and track education requirements. We recommend that brokers establish a schedule to periodically check with team leaders affiliated with their brokerage to ensure that the broker knows who is the current leader and that the supervision course was taken in a timely fashion.

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## *Teams*

- Two or more Associate Brokers, Salespersons, or any combination who:
  - **Work together on a regular basis** to provide real estate brokerage services; and
  - **Represent themselves** to public as being part of one entity; and
  - **Designate themselves by a collective name** such as team or group.

## *Team Leader*

- Team shall designate team leader who is:
  - **Associate Broker**; or
  - **Salesperson with 3 years of experience.**
- The Team Leader shall:
  - **Maintain list** of members and employees
  - **Keep the list current** and dated so supervisor and MREC knows how recent it is
  - **Provide list to Broker** or Manager
  - **Copy for MREC**, if requested

## *Teams*

- The Team Leader and Team Members **shall adhere to all office rules, practices, and procedures established by the Broker and manager**
- Must abide by advertising requirements -- **advertising needs to be approved BEFORE being placed** – NOT AFTER -- set out by law for all agents plus those specific to teams.

Refer to Handout #2 (MAR) Article

## *Teams - Advertising*

- Name of team **may not reference offering real estate brokerage services independent of Broker** name or Company name.
- Advertising by team:
  - Name of firm - meaningful and conspicuous
  - Name of at least one team member on team advertising

Refer to handout 2 (MAR article)

## *Teams Advertising*

- **If no broker number – no agent number.** If using just an email address, must include broker's phone number.
- **Team name MUST be directly connected to the name of brokerage.**
- A phone number is **not a requirement.**

## *Teams – Dual Agency*

- Broker may designate two members of a team as intra-company agents if parties have been **advised in writing** that the licensees are part of same team and team could have a financial interest in the outcome, **and consent has been signed by all parties PRIOR TO offer being written.** *(Handout in your packet or on MREC website or ask your broker for company approved form)*

**ATTENTION LICENSEES: THIS IS NOT AN ADDENDUM IT IS SUGGESTED LANGUAGE.** A form created by your broker/company with the below information must be presented to the Seller no later than when the Seller signs the listing agreement and the Buyer, prior to showing any properties listed by members of your team.

#### **NOTIFICATION OF DUAL AGENCY WITHIN A TEAM**

Under Maryland law, a team that provides real estate brokerage services must consist of two or more associate brokers or salespersons, or a combination of the two, who:

1. work together on a regular basis;
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."

The team operates within a brokerage, and team members are supervised by a team leader as well as by the broker, and, if they work in a brokerage branch office, by the branch office manager.

The law permits one member of a team to represent the buyer and one member to represent the seller in the same transaction only if certain conditions are met. If both parties agree, the **broker** of the real estate brokerage with which the salespersons or associate brokers are affiliated or the **broker's designee** (the "dual agent") shall designate one team member as the intra-company agent for the buyer and another team member as the intra-company agent for the seller. No one else may make that designation.

**The law also requires that the buyer and seller each be notified in writing that the two agents are members of the same team, and that the team could have a financial interest in the outcome of the transaction in addition to any financial benefit obtained by selling one of the broker's own listings. THIS CONSTITUTES YOUR NOTICE OF THOSE FACTS.**

Dual agency may occur only if both parties consent to it, and sign the Consent for Dual Agency form prescribed by the Real Estate Commission. If you have concerns or questions about being represented by a team member when another team member represents the other party, you should address these to the broker or branch office manager before signing the Consent form.

#### **ACKNOWLEDGMENT OF RECEIPT OF NOTICE**

I/we acknowledge receipt of the Notification of Dual Agency within a Team.

\_\_\_\_\_  
DATE: \_\_\_\_\_  
\_\_\_\_\_

## Handout # 3

MREC suggested language for dual agency disclosure and notification by a team -- A form created by the Broker, containing this information, must be presented to and signed by a Seller at the time of listing, or presented to and signed by a Buyer prior to showing any properties listed by your team.

<http://www.dllr.maryland.gov/forms/mrecdualagency.pdf>

## *Teams - Location*

- Team members must conduct brokerage activities **from the office location where their licenses are issued**, according to MD law.
- **Branch license required** for separate office space.
- **Branch manager required for separate office space** – manager must be licensed for at least 3 years.

## *Reasonable & Adequate Supervision*

### *Factors Effecting Reasonable & Adequate*

- Characteristics of the Firm
  - Number of agents
  - Number of Branch Offices & number of agents in each office
  - Number of Management Personnel in each office



### *Factors Effecting Reasonable & Adequate*

- Normal and routine working days and hours of the Broker and management personnel.
- Type of real estate activities conducted by the firm.

### *Factors Effecting Reasonable & Adequate*

- Availability of regular training or education  
(*Minimum standard: Every 2 months*)
  - Not necessarily CE
  - Keep records of attendance
- Sign-In Sheet
  - Agenda – new laws, regulations, processes, forms, etc.
  - Handouts

### *Factors Effecting Reasonable & Adequate*

- Policy for required number of meetings & consequences of failure to attend – would be helpful to you as a supervisor.

### *Factors Effecting Reasonable & Adequate*

- Supervisory personnel to review and discuss:
  - Brokerage Agreements
    - Listing & Buyer Agency Agreements
    - Authorized Signatories
  - Agency Disclosures
  - Updated Forms
  - State & Local Disclosures
  - Advertising
  - Working with Teams

## *Factors Effecting Reasonable & Adequate*

- **Written Policies and Procedures** to include:
  - Proper handling of trust monies
  - Compliance with laws: federal, state and local
  - Advertising requirements under the law
  - Review of contracts

Refer to Handout #4

## *Factors Effecting Reasonable & Adequate*

- **Written Policies and Procedures for**
  - Distribution and dissemination of information on laws & regulations
  - Obligation of licensee to comply with all Maryland Laws Title 17 and Code of Ethics- COMAR 9.11
  - Requirements, restrictions and limitations applicable to sale/lease of property personally owned by a licensee and purchase or lease of property by licensee for personal use

See Handout #4

## Handout #4



Supervising Broker Best Practices

A Broker's Guide to Creating a  
Policy and Procedure Manual

September 2012

<http://www.dllr.maryland.gov/licensing/mrec/mrecarello.pdf>

### *Factors Effecting Reasonable & Adequate*

- **Written Policies and Procedures for:**
  - Use of and limitations on Unlicensed Assistants  
(see MREC website for Do's and Don'ts)
  - Agency disclosures
  - Team policies
  - Dual Agency policies

Refer to Handout #5

## Do's and Don'ts for Teams and Groups - Real Estate Commission

### Teams

- ✔ A Team must consist of two or more Associate Brokers or Salespersons or a combination of the two who:
  1. Work together on a regular basis;
  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."
- ✔ All licensed team members must be affiliated with the same broker; and, if applicable, offer brokerage services at the same branch office.
- ✗ A licensed broker may **NOT** be a member of a Team.
- ✗ The name of the Team may **NOT** contain the terms "Real Estate," "Real Estate Brokerage," "Realty," or any other term that would lead the public to believe that the Team is offering real estate brokerage services independent of the Broker.
- ✔ Team members must conduct all real estate brokerage activities from the broker's office or the branch office where their licenses are displayed.
- ✗ A Team may **NOT** operate out of an office or location other than the broker's office or the branch office where their licenses are displayed.

### Advertising

- ✔ All Team advertising must contain:
  1. The full 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 broker or the branch office manager.
- ✔ The Team name in the advertisement must be directly connected to the name of the brokerage.
- ✔ "Advertiser" 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.
- ✔ "Advertisement" means, unless the context requires otherwise, any oral, written, or printed media advertisement. "Advertisement" includes any correspondence, mailing, 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. (§17-027.2 Annotated Code of MD)

<http://www.dlr.maryland.gov/license/mrec/mrecreams.shtml>

## Handout #5

### Team Leaders

- ✔ A Team must designate a team member as its Team Leader. The Team Leader must be an Associate Broker or a Salesperson with at least three years' experience.
- ✔ The Team Leader must maintain a current list of all members and employees of the Team.
- ✔ The Team Leader must provide the list and any revisions to the list to the Broker or the Branch Office Manager where the Team Members' licenses are displayed.
- ✔ The Team Leader must exercise reasonable and adequate supervision over the provision of real estate services by members of the Team.

### Brokers and Branch Office Managers

- ✔ The Broker or Branch Office Manager must maintain copies of the lists of Team Members and Employees, and make the copies available to the Commission on request.
- ✔ The Broker and Branch Office Manager must supervise the Team Members, and this supervision is in addition to the supervision responsibilities of the Team Leader.

✗ The Broker and Branch Office Manager may not delegate their supervisory responsibilities over Team Members to the Team Leader.

### Team Leaders and Members

- ✔ The Team Leader and all Team Members must adhere to all office rules, practices, and procedures established by the Broker and the Branch Office Manager.

### Dual Agency

- ✔ The Broker may designate two members of a team as intra-company agents for the Buyer and the Seller 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. The Buyer and Seller must complete the "Notification for Dual Agency within Team" form (Word) required under existing law before Dual Agency may occur.
- ✗ The Team Leader may **NOT** designate Team Members as intra-company agents. Only the Broker may make this designation.
- ✔ The Broker must ensure that both parties have acknowledged in writing receipt of a "Notification of Dual Agency within a Team" form **PRIOR** to designating two Team Members as intra-company agents in a transaction.

## Factors Effecting Reasonable & Adequate

- **Evidence (Records) of:**
  - Attendance at Sales Meetings
  - Review of contracts of sale, lease, and brokerage agreements executed by all parties
  - Agency documents for unrepresented parties
  - Terms, signatures, initials, mandated forms, i.e., disclosure/disclaimer, lead paint, etc.

*Factors Effecting Reasonable & Adequate*

- **Review of advertisements** to be placed (i.e., prior to placement) by licensees
- **The unauthorized practice of law** not allowed i.e., writing the entire addendum
- **Compliance** with policies & procedures
- **Dissemination** of policies & procedures

Under the regulation:

COMAR 9.11.03 C

*On showing that the broker has not provided reasonable and adequate supervision **the burden of proof shall be on the broker** to show that the supervision which the broker did provide was reasonable and adequate.*

## *Enforcement*

- **Section 17-322**
  - (b) 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
    - (34) violates § 17-320(d) of this subtitle by failing as a branch office manager to exercise reasonable and adequate supervision over the provision of real estate brokerage services by a salesperson or associate broker in that office

## *Enforcement*

- **Team Leaders are responsible for the same supervision responsibilities** as Brokers and Branch Managers under Title 17, Section 17-545.

# *ADVERTISING*

## *Advertisements*

- Use of any **oral, written or visual** advertisement by a salesperson, broker, associate broker, or person on behalf of them.
- Any oral, written, audio, visual or **printed media** advertisement.
- **Must Present True Picture** of property – i.e., “*Photoshopping*” additions and removals.



## *Basic Rules of Advertising*

- The **full name of the brokerage** with whom the licensee is affiliated is **meaningfully and conspicuously** included:
  - Full name of business, not just logo
  - Name of franchise as it appears on Broker's License, not just the generic franchise name – examples
- The Commission enforces the **Code of Ethics in the Maryland Code of Regulations (COMAR)** not the NAR Code of Ethics.

## *Basic Rules of Advertising*

- Email / Phone Numbers
  - **May not use an individual phone number or email** address unless the identified telephone number of the broker or branch office manager is also in the advertisement.
- A phone number is **not required** in an advertisement.
- **Oral advertisement** (radio or TV) must include brokerage name with agent's name.

## *Advertising - Social Media*

- Falls under Advertising Laws and Regulations  
*be careful what you post.*
- Violating laws by posting property information that should be kept confidential (i.e. just sold for full price when in fact only under contract).

## *Advertising – Social Media*

- Disparaging the buyer or seller online.
- Web sites should have company name as well as licensee's name on all pages in the same place so the public knows that you are a licensee affiliated with a brokerage.

## *Trade Names / Entities*

- Only a Broker may practice through entity, with Trade Name.
- A licensee forming any legal Maryland entity is allowed to do so for payment of commissions only.

## *Trade Name/Entities*

- The type of corporation that can be created has been modified as of 10/1/15 to include any legal entity allowed in Maryland. (Ex: LLC, INC, PSC).
- However, all members of the corporation must hold a real estate license.

## *Trade Name/Entities*

- May not use personal name as a trade name on your license. Broker trade name only
- Broker may pay licensee's corporate entity with proper documentation. **Not mandatory to pay a corporation** -- it is the broker's decision.
- **Broker has responsibilities of knowing that corporation is in good standing.**

## *Designated Name*

- Licensee may provide real estate brokerage services under a **designated name** (nickname) that has been approved by the Commission.
- Licensee may add a **designated name (nickname)** on a **license certificate** and pocket card if the licensee submits to the Commission
  - An application,
  - Legal documents if necessary
  - A fee of \$25.00
- **Advertising must be done in the name that is on the license.**

## *Paying Attorneys, Referral Fees, Rebates, & Deposits*

### *Paying Attorneys*

- As of October 2016 – A lawyer may only share in the commission if the lawyer is licensed as an attorney in Maryland and the lawyer provides real estate brokerage services to another person, and those services are in the course of the lawyer's regular practice of law.

## Paying Attorneys

- A Divorce Attorney who refers clients is NOT eligible just for the referral.
- May pay if attorney is licensed as a broker in Maryland.
- May pay if attorney is performing the legal services related to transaction (Attorney who is hired to handle an estate).

### Incentives and Rebates - Real Estate Commission

The Real Estate Commission and the Attorney General's Office receive inquiries from time to time about the payment of rebates to a party to a transaction or the use of incentives to induce a consumer or a licensee to deal with a particular real estate agent or broker. There are several provisions of the licensing law that address these issues.

**Incentives.** Section 17-322(b)(9) provides that a licensee may not offer a prize or conduct a contest in order to influence a party in the sale of real property. This provision has been interpreted by the Attorney General's Office to mean that if a licensee uses inducements to obtain a listing or a buyer/broker agreement, or to motivate a buyer to purchase certain property, those inducements must be offered to all consumers on the same basis. There cannot be a contest where a seller or buyer is offered a chance to receive a prize or a cash payment. If an offer of inducements is made, it must be available to all.

The Commission does not view this as a contest used to influence a party to purchase property.

There have also been questions about whether unlicensed individuals who refer consumers to a licensee may be compensated in some way or may participate in a drawing. The licensing law considers the act of referral to be the provision of real estate brokerage services, and thus an activity that requires a license if compensation in any form is involved. The Commission views the possibility of winning a prize as a form of compensation. Therefore, under Section 17-604(a), a drawing may not include an individual based on referrals he or she has made to the licensee.

**Rebates/Cash Payments.** Section 17-604 provides that a licensee may not pay compensation in any form

for the provision of real estate brokerage services to an individual who is not licensed. A person who is simply a party to a real estate transaction is not providing real estate brokerage services within the definitions in Section 17-101, and therefore may receive monies from a licensee. If the monies are used to pay settlement charges, that should be reflected on the HUD-1 form.

Office of the Attorney General  
Counsel to the Real Estate Commission  
12/14/10

## Handout #6

[http://www.dlir.maryland.gov/  
license/mrec/mrecincentives.  
shtml](http://www.dlir.maryland.gov/license/mrec/mrecincentives.shtml)

## *Referral Fees*

- **May not pay compensation in any form** for the provision of real estate brokerage services to **any person who is not licensed.**
- **Salesperson or Associate Broker MAY NOT receive (directly) any compensation** (referral or otherwise) without it being processed through the broker as compensation, i.e., apartment finders fees, oil company, service provider, BPO.

Refer to Handout #6

## *Referral Fees*

- **A referral fee may not be paid to a non-licensed individual** simply for the referral of business.

Refer to Handout #6

## *Rebates*

- Rebates may be given to someone who is not providing real estate brokerage service, i.e., a buyer or a seller -- also rebate to church, school, etc.
- Rebate must be disclosed if to buyer or seller on CD (closing document).

## *Rebates*

- If used to pay settlement charges, show on CD (closing document).
- Agreement to pay rebate must be in writing.
- Disclose to other party even if not required on CD (Amount does not need to be disclosed to other party).



## *Incentives*

- May not use a prize or lottery to influence or attempt to influence an individual in the sale of real estate.
- May not offer Inducements to obtain a brokerage agreement (seller) or motivate a buyer to purchase through the particular agent.

Refer to Handout #6

## *Incentives*

- Can be contest, (i.e. a chance to receive a prize) but not for a specific performance (i.e., listing agreement)

## *Deposits*

- Place in escrow account **within 7 business days of contract acceptance.**
- **3rd party holding money disclose Pros and Cons** – what is liability if any.
- **Cannot hold deposit hostage** due to other terms of a listing agreement or expenses.
- **Must balance escrow accounts** and be able to account for all monies held in escrow.
- **MREC will audit** as required by law.

## *Release of Deposit*

- **Written Mutual Release** of Deposit Agreement
- **30-Day Letter**
- **Interpleader**
- Deposit under **HOA and Condominium Act** still requires a release to be signed.
- **No written exceptions** regarding the escrow monies if being held by broker

## *Buyer's Right to Select*

- Agent or Broker may not require a buyer, as a condition of settlement, to employ a particular:
  - Title insurance company;
  - Settlement company;
  - Escrow company
  - Mortgage lender or financial institution
  - Title Attorney

## *Misc. Matters*

## *Records*

- **Supervisor to verify** that contract files are complete (listing or selling side).
- Retain for **5 years**.
- **May store electronically** but must be available as if they were paper.
- **Electronic Signatures** allowed.

## *Records*

- Broker/Agent Files –**Need entire transaction** in Broker's file.
- **Personal Information Protection** needed.
- **Intracompany transactions should be secured** especially if transaction within the same office.

## *Misc. Matters*

- **Supervisor to Ensure licensees are active/not expired and still working**
- Possession of license by broker or branch manager **required for each agent affiliated with your company or office.**

## *Misc. Matters*

- **Referral Status** – there is no such status.
  - Must have active license
  - Must complete CE
- **Inactive Status**
  - Must renew to remain inactive
  - Must complete C.E. at time of renewal in order to renew inactive.
  - Maximum of three (3) years on inactive from date of going inactive (not renewal date)

## *Misc. Matters*

- **Termination of affiliation**
  - Online ability pending – **COMING SOON**
  - License Change Form
  - Letter to Licensee by Mail
  - Send copy of letter with License Change Form to Commission

## *Misc. Matters*

- Make sure you are in **Compliance with Fair Housing Laws.**
- **Coming soon** and pocket listing.
- **Who can sit in an open house.**
- Use of **Unlicensed Assistant.**

**Important Links**

- Real Estate License
- Change Your Info
- License Renewals and Reinstatement
- Out-of-State Licenses
- Continuing Education
- Certificates of License

## ATTORNEY GENERAL'S OFFICE DELIVERS OPINION ON "COMING SOON" LISTINGS IN MARYLAND

### COMING SOON, WHISPER, AND POCKET LISTINGS

If you are considering recommending to one of your clients that their property be designated as "coming soon" to market instead of being entered into the multiple list system as soon as the listing is signed, there are a number of issues that you need to think about. First, Maryland law requires that you have a signed listing agreement before you market or offer the property for sale or lease (COMAR 09.11.01.12). That agreement should set forth the marketing plan that the seller has consented to, especially where the plan includes a "coming soon" designation or some other form of restricted marketing.

**MESSAGE FROM THE EXECUTIVE DIRECTOR**  
 Kathie Connelly



Greetings, and welcome to the Fall 2014 edition Maryland Real Estate Commission (MREC) and to this past quarter we went through a complete a time we scheduled and conducted our series of the State. Plus, we stay an increase in our days rebounding real estate market. We have enjoyed your summer was a productive one, as well.

From April through June, we hosted 13 meetings for over 4,000 real estate bro through Maryland. We believe the meetings were a great success, judging fr the numerous emails we received applauding our efforts, and the responses we received to our subsequent email surveys. Every four percent of responses thought the information provided w useful, and 96% thought the Commissioners and staff were well prepared. A copy of the instructional slides we used for our presentations was sent via email to all brokers for a review of the material we covered. We would like to thank all of the brokers who helped make the series successful, and we will let you know when the Commissioners decide to hold the meetings agai be it annually or biennially.

The Commission held its annual elections in June, and voted unanimously to reelect John Nishi D'Ambrasia as Chair and Anna S. Cooke as Vice Chair. We would like to thank them for continue to serve in leadership positions on the Commission.

We continue to see growth in the number of real estate examtakers as compared to the same t last year. In July 2014, there were 765 people who took the Maryland Salesperson's Exam, (sixt five people took the Maryland Broker's Exam in July 2014, while only 47 took it in July 2013). We are hopeful that the numbers will continue trending upward, and that the industry fully recovers from the impact of the recession.

Hopefully, you were able to take some time off with your family and friends this past summer a you plan to do so in the near future. Enjoy the fall weather!

### WHO CAN "SIT" AT AN OPEN HOUSE?

One of our Commissioners recently received an email from a company advertising an online "sitting service" for open houses. By registering with the service, agents can either post their availability to "sit" others' open houses, or post "sitter wanted" ads for their own listings. In Maryland, if the "sitter" and the listing agent are not licensed under the same brokerage, the practice can carry some severe legal consequences for everyone involved.

According to the Maryland Real Estate Brokers Act, a real estate salesperson or associate broker may only provide services through his or her own brokerage. So if an agent from another brokerage conducts the open house, that agent is considered **unlicensed** for the purposes of the Act. The legal ramifications are numerous and can be very detrimental:

- The unlicensed agent who conducts the open house may be found guilty of a criminal misdemeanor under two provisions of the law, and if convicted, would face up to a year's imprisonment or a fine up to \$5,000, or both. Those penalties are for a first offense and may be imposed for both areas of violation. For second and third offenses, the fines increase to \$15,000 and \$25,000, respectively.



<http://archive.constantcontact.com/fs181/1107521351603/archive/1118113320947.html>

## Guidelines for the Use of Unlicensed Employees and Online Chat Providers - Real Estate Commission

# Handout #8

Real estate brokers are required to exercise reasonable and adequate supervision over the provision of real estate brokerage services by any other individual acting on behalf of the broker. Md. Code Ann., Business Occupations and Professions §17-320(c). Real estate brokers are similarly responsible for the supervision and control of activities performed by their employees or agents in their name during the course of a transaction for which a real estate license is required, whether or not the actual activities performed require a real estate license.

COMAR 09.11.05.03B sets out factors to be considered by the Commission when determining whether supervision is adequate and reasonable. One of the enumerated factors is whether the brokerage firm has written policies and procedures which provide clear guidance regarding the "use and limitations of unlicensed personal assistants." COMAR 09.11.05.03B(1)(c)(5).

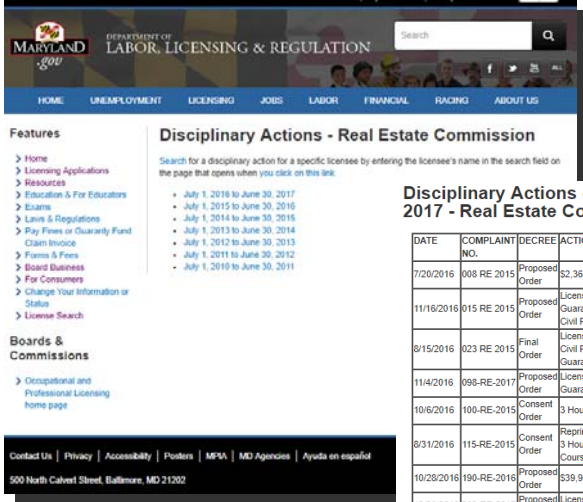
In 1995, the Real Estate Commission issued guidelines for the use of unlicensed employees to help facilitate the broker's duty to supervise activities during the course of a transaction for which a real estate license is required. Since that time, brokerage practices have change and evolved in response to new technology. The Guidelines, republished below with minor edits, remain applicable to new technologies, such as online chat activity conducted by an employee or third party operating pursuant to a service agreement to provide chat services on behalf of a broker (*chat provider*). For example, a *chat provider* is permitted to, on behalf of a licensee:

- direct a client to a licensee,
- Arrange the date and time of home, termite, and well/septic inspection, mortgage application, pre-settlement walk-thru, and settlement, or
- Schedule an open house or appointment for a licensee to show a listed property.

The restrictions enumerated below also remain applicable in the *chat provider* context. Brokers should be especially diligent in ensuring that *chat providers* are not soliciting customers with respect to a specific property.

<http://www.dlir.maryland.gov/license/mrec/mrecdodots.shtml>

# Additional Useful Links



**Disciplinary Actions - Real Estate Commission**

Search for a disciplinary action for a specific licensee by entering the licensee's name in the search field on the page that opens when you click on this link.

**Disciplinary Actions - July 1, 2016 to June 30, 2017 - Real Estate Commission**

DATE	COMPLAINT NO.	DECREE	ACTION SUMMARY	CASE NAME
7/20/2016	008-RE-2015	Proposed Order	\$2,365 Guaranty Fund Award	MREC vs. [REDACTED]
11/16/2016	015-RE-2015	Proposed Order	License REVOKED, \$7,193.41 Guaranty Fund Award, \$18,000 Civil Penalty	MREC vs. [REDACTED]
9/15/2016	023-RE-2015	Final Order	License REVOKED, \$25,000 Civil Penalty, \$8,854.92 Guaranty Fund Award	MREC vs. [REDACTED]
11/4/2016	098-RE-2017	Proposed Order	License Suspended, \$4,633 Guaranty Fund Award	MREC vs. [REDACTED]
10/6/2016	100-RE-2015	Consent Order	3 Hour Ethics Course	MREC vs. [REDACTED]
9/3/2016	115-RE-2015	Consent Order	Reprimand, \$3000 Civil Penalty, 3 Hour Ethics, 3 Hour Contract Course	MREC vs. [REDACTED]
10/28/2016	190-RE-2016	Proposed Order	\$39,960 Guaranty Fund Award	MREC vs. [REDACTED]
12/20/2016	203-RE-2017	Proposed Order	License Suspended, \$5,000 Guaranty Fund Award	MREC vs. [REDACTED]
2/10/2017	219-RE-2017	Consent Order	\$1,500 Fine	MREC vs. [REDACTED]
8/31/2016	278-RE-2016	Consent Order	\$2,500 Fine	MREC vs. [REDACTED]
12/9/2016	295-RE-2015	Proposed Order	\$50,000 Guaranty Fund Award	MREC vs. [REDACTED]

## Handout #9

<http://www.dlrl.maryland.gov/license/mrec/mrecdisc.shtml>



# Handout #10

The screenshot shows the Maryland Department of Labor, Licensing & Regulation website. The main navigation bar includes links for HOME, UNEMPLOYMENT, LICENSING, JOBS, LABOR, FINANCIAL, RACING, and ABOUT US. The 'Features' sidebar lists various services like Licensing Applications, Hearings, and Exams. The main content area is titled 'Law and Regulations - Real Estate Commission' and lists several items: Title 17, Business Occupations and Professions, Annotated Code of Maryland; Regulations Online - 09-11; Legislation of Interest to You; and Proposed Regulations. An image of a gavel is also visible.

<http://www.dlir.maryland.gov/license/law/mreclaw.shtml>

# Handout #11

The screenshot shows the 'Licensing Queries' page on the Maryland Department of Labor, Licensing & Regulation website. The page includes a search bar and a list of professions: Architects, Athlete Agents, Barbers, Cemetery Oversight, Certified Interior Designers, Certified Public Accountants, Cosmetologists, Foresters, Home Improvement, Heating, Ventilation, Air Conditioning Refrigeration (HVACR), Individual Tax Preparer, and Landscape Architects. The page also features the DLLR logo and a 'Welcome to the Real Estate Commission Public Query' section. This section explains that users can search for active licensees practicing in the State of Maryland by Name, Business Location, or License Registration Number. A note states: 'Please contact us if you need information regarding disciplinary actions against a licensee.' Contact information for the Maryland Real Estate Commission is provided, including phone numbers and a website link.

<https://www.dlir.state.md.us/pq/>

**Handout #12**

**Attention Military Veterans and Families - Learn About Expedited Licensing**

The Veterans Full Employment Act of 2013 requires the Division of Occupational and Professional Licensing and the Commissioner of Financial Regulation to assist recently discharged veterans and spouses of currently serving members of the United States Armed Forces, including active duty reservists and members of the National Guard obtain occupational and professional licenses in Maryland.

**Who does this legislation help?**

A person who holds a valid license in good standing in another state and:

- a. has recently received an honorable or otherwise was released (except for a dishonorable discharge) from the U.S. Armed Forces (Army, Navy, Marines, Air Force, Coast Guard) or on active duty as a member of a reserve or national guard component of these services;
- b. is a member of the United States Armed Forces who is assigned to a duty station located in Maryland;
- c. is a spouse of a member of the United States Armed Forces who is assigned to a duty station located in Maryland;
- d. is a spouse of a recently discharged veteran or member of the United States Armed Forces, or surviving spouse of a member of the United States Armed Forces.

<https://www.dlrr.state.md.us/license/opvetlic.shtml>

**Handout #13**

**Apply for a Reciprocal License (Pennsylvania and Oklahoma Licensees ONLY) - Real Estate Commission**

**Apply for a Reciprocal License (Pennsylvania and Oklahoma Licensees ONLY) - Real Estate Commission**

Download the Original Application for Reciprocal Real Estate License (Word)

Maryland Annotated Code of Maryland, Business and Occupations, Article 17-3A- Reciprocity

In accordance with Title 17-3A of the Annotated Code of Maryland, the following is a list of states with which the Maryland Real Estate Commission has signed a reciprocal agreement:

- [Pennsylvania Reciprocity Agreement \(Word\) and Renewal Application for Reciprocal Real Estate License Under Reciprocal Agreement with Pennsylvania \(Word\)](#)
- [Oklahoma Reciprocity Agreement](#)

The terms of a reciprocal agreement are specific and must be met. View basic terms and download the application and instructions for these states only.

For all other states, apply for an [Out-of-State License Recognition \(Waiver\)](#).

To qualify for a Maryland license under a reciprocal agreement, the basic terms are as follows:

- You must have gained your first license in a state with a reciprocal agreement with MREC
- You must submit a full and complete certified license history with the application
- Your license must be current and active

<https://www.dlrr.state.md.us/license/mrec/mrec recip.shtml>

**Handout #14**

**Out-of-State License Recognition - How an Out-of-State Licensee Applies for Licensure in Maryland - Real Estate Commission**

The Commission only has reciprocal agreements with Pennsylvania and Oklahoma. Individuals actively licensed in all other states may start the process by providing a certificate of full licensing history from the state where they were first licensed and are currently licensed. Send the history document (original only, not a copy) to us within 30 days of its issue date by your home state along with a cover letter, personally signed, with your mailing address and complete contact information, including an email address. Send to the Education Administrator, Maryland Real Estate Commission, 500 North Calvert Street, Baltimore, MD 21202-3651. Do not fax or email this information. If qualified, you will be sent all information needed to register for the exam, and if you do not qualify you will be so advised. Education and experience from a home state are reviewed for transferability, individually for each applicant. Waivers may be offered only to active licensees.

<http://www.dllr.maryland.gov/license/mrec/mrecout.shtml>

**Handout #15**

**New Laws Effective October 1, 2016 - Real Estate Commission**

**House Bill 1453 and Senate Bill 824 Real Estate Licensees - Verification of Service Provider Licensing Status** states that a licensee of the State Real Estate Commission need not verify that a specified service provider is currently licensed by the state to perform the services if the licensee offers the name of the service provider to a client in the provision of real estate brokerage services. It also requires that, if a licensee offers the name of a home improvement contractor to a licensee, the licensee verify annually that the home improvement contractor is licensed by the Maryland Home Improvement Commission. [View the text of the bill.](#) We are in the process of updating our regulations to conform to this new law.

**House Bill 1469 Real Estate Brokers - Disclosure and Consent Requirements** makes significant changes to the laws governing agency relationships in residential real estate transactions. It removes presumed buyer's agent and makes changes to the definitions of the terms buyer's agent, dual agent, intra-company agent, and seller's agent. It also specifies when, and in what form, agents must disclose who they represent. Further, it requires that a certain notice be displayed at an open house. [View the text of the bill.](#) We are in the process of updating our regulations to conform to this new law.

**House Bill 747 Real Estate Brokers - Exemption for Lawyers** limits an existing licensing exemption for lawyers by requiring that the lawyer is authorized to practice law in the state and is providing real estate brokerage services while representing *another person* during the course of the lawyer's regular practice of law. [View the text of the bill.](#)

<http://www.dllr.maryland.gov/license/mrec/mrecoc2016.shtml>

# Handout #16

**Forms and Fees - Real Estate Commission**

**Forms**

- Real Estate Commission - Maryland
- Understanding Whom Real Estate Agents Represent
- Consent for Dual Agency
- Notification of Dual Agency within Team
- Open House Disclosure Sign - THIS DOCUMENT MAY NOT BE ALTERED, MUST BE DISPLAYED IN AT LEAST 8.5" X 11" SIZE, IN COLOR, AND REMAIN ON THE MARYLAND REAL ESTATE COMMISSION LETTERHEAD.
- Original Application for Reciprocal Real Estate License Under Reciprocal Agreement with Pennsylvania (Word)
- Renewal Application for Reciprocal Real Estate License Under Reciprocal Agreement with Pennsylvania (Word)

**Forms**

- Real Estate Commission - Maryland Residential Property Disclosure/Disclaimer Statement (Word)
- Understanding Whom Real Estate Agents Represent
- Consent for Dual Agency
- Notification of Dual Agency within Team
- Open House Disclosure Sign - THIS DOCUMENT MAY NOT BE ALTERED, MUST BE DISPLAYED IN AT LEAST 8.5" X 11" SIZE, IN COLOR, AND REMAIN ON THE MARYLAND REAL ESTATE COMMISSION LETTERHEAD.
- Original Application for Reciprocal Real Estate License (Word)
- Renewal Application for Reciprocal Real Estate License Under Reciprocal Agreement with Pennsylvania (Word)

**Fees**

Fees are set by Law and Regulation and are subject to change with public notice given.

Effective January 11, 2016

- Broker License, Original (includes \$20 Guaranty Fund payment): \$190
- Broker License, Renewal: \$170
- Associate Broker License, Original (includes \$20 Guaranty Fund payment): \$130
- Associate Broker License, Renewal: \$110
- Salesperson License, Original (includes \$20 Guaranty Fund payment): \$90
- Salesperson License, Renewal: \$70
- Certificate of License History (5 yr.) (Eff. 3/1/09): \$25/75
- Broker Business Address Change: \$5
- Broker Business Name Change (for each License under broker) (eff. 3/1/09): \$25
- Branch Office License: \$5
- Reactivate Inactive License: \$50

<http://www.dlir.maryland.gov/license/mrec/mrecaff.shtml>

# Handout #17

**Rental Security Deposit Calculator**

Note that this interest rate calculation only applies to interest accruing on a security deposit under a residential lease or mobile home park rental agreement on or after January 1, 2015. Interest accruing on Maryland residential tenancies for period ordinance

Date Security Deposit Given to Landlord:

Tenancy End Date:

**Determinations**

In creating this calculator, the Maryland Department of Housing and Community Development (DHCD) made the following determinations in the interpretation of the revised Real Property Article §8-203 to create the logic and formulas necessary to provide these calculations:

- Calculations are based on a start date defined as the date that the security deposit is given to the landlord, and an end date defined as the tenancy end date;
- For the purposes of the calculation, all years have 365 days. For leap years (which have 366 days), the error represents less than \$0.05 on a security deposit of \$1,000 at an interest rate of 1.5%, and less than \$0.10 on a security deposit of \$1,000 at an interest rate of 3.0%.
- The interest rate used to calculate each monthly payment is the interest rate in place on the first day of that period. Should a monthly payment period encompass two calendar years, the interest rate for the first of those calendar years will be applied to that payment period; and
- Noting that the daily 1-year U.S. Treasury yield curve interest rate as of the first business day of a calendar year will only be available on January 2, 3 or 4, (depending on which day of the week January 1st falls on), any lease which begins on or after January 1 and before the first business day of the year will have the interest rate for that calendar year applied at the end of the relevant monthly period.
- No interest is payable on a partial month at the end of a lease/tenancy.

<http://dhcd.maryland.gov/Pages/RSDCalculator/Default.aspx>

## *Useful Links*

- Continuing Ed Requirements (handout 1)  
<http://www.dllr.maryland.gov/license/mrec/mreceducreqafter.shtml>
- Supervision best practices (handout 4)  
<https://www.dllr.state.md.us/license/mrec/mrecarello.pdf>

## *USEFUL LINKS*

- Referral Fee, Rebates, Prizes or Lottery (handout 6)  
<https://www.dllr.state.md.us/license/mrec/mrecnews.shtml>
- Disciplinary actions (handout 9)  
<https://www.dllr.state.md.us/license/mrec/mrecdisc.shtml>
- Laws and Regulations (handout 10)  
<http://www.dllr.maryland.gov/license/law/mreclaw.shtml>

## *Useful Links*

- Recommendation of home improvement contractors and other licensees (handout 11)

<http://dllr.maryland.gov/pq/>

- Expedited for Military Veterans and Families (handout 12)

<http://www.dllr.maryland.gov/license/opvetlic.shtml>

## *Useful Links*

- Reciprocity (handout 13)

<https://www.dllr.state.md.us/license/mrec/mrecrecip.shtml>

- Out of state waiver (handout 14)

<https://www.dllr.state.md.us/license/mrec/mrecout.shtml>

- Agency law information (handout 15)

<http://www.dllr.maryland.gov/license/mrec/mrecoct2016.shtml>

## *Useful Links*

- Agency Forms (handout 16)

<http://www.dllr.maryland.gov/license/mrec/mrecaff.shtml>

- Rental Security Deposit Calculator (handout 17)

<http://dhcd.maryland.gov/pages/rsdcalculator/default.aspx>