

# RE119RC26: Real Estate Teams/ Groups: Compliance and Oversight

**Objectives:** Understanding how the Massachusetts real estate licensing laws impact managing teams/ groups in your office, as well as operating a team/ group legally.

## Teams/Groups are not legally recognized in Massachusetts

### 1. The fundamentals of a Team/Group

- a. Typical team/group objectives: pool resources (administrative/ marketing, cooperation on transaction)
- b. Relationship with the broker (*MGL 112 87RR and 87UU, 254 CMR 2.00 and 3.00*)
  - i. Teams/ groups are not licensed separately –members are licensed individually
  - ii. Each licensed team/group member works under the direct supervision of the broker, with an Independent Contractor agreement between the member and the broker
  - iii. Payment of licensed team/group members can only come from the broker of record to the licensee
  - iv. Payment to an individually owned corporation or LLC only if properly licensed, broker licensees only
- c. Marketing/ Branding (*254 CMR 3.00 (9)*):
  - i. While teams/groups can market themselves as such, the brokerage name always needs to be conspicuously displayed
  - ii. Team/ group branding is fine as long as it does not overshadow the brokerage
    1. Name of the team/group cannot include real estate/ realty
    2. Name and logo to be reviewed/approved by broker
    3. Team domain names must adhere to 254 CMR 3.00(9)
  - iii. Each licensed team member must identify themselves as part of the brokerage
- d. All team members individually liable for complying with real estate laws and regulations, broker liable for failure to supervise (fines, probation, suspension and revocation of license)

### 2. Relationship between team/ group members

- a. Agreement between the team/ group members
  - i. Two distinct concepts

Note: there are no official definition for a team or group, in casual conversation they are used interchangeably but in practice they are likely to refer to different structures with implications on marketing, agency disclosures and business relationships, liability and potential compensation sharing.

    1. Team: Everyone shares everything, everyone can stand in for the other, clients are “clients of the team”

2. Group: Only resources are shared, each group member has their “own” client, more convenience arrangement than business
- ii. A team/group selects their operation policy (team or group), it must then be applied consistently to all transactions, the team or group cannot alternate between policies/ scenarios.
- iii. Example of items to consider in a “team/ group manual” (which cannot replace company policies, and must be approved by the Principal Broker)
  1. What is shared, what is not (marketing, showings, clients,...)
  2. Responsibilities of each member, is there a team leader?
  3. Lead distribution
  4. Compensation agreement (remember, the money comes from the broker for all licensed team/ group members)
  5. Internal code of conduct
  6. Separation agreement - What happens when a team/ group member leaves the team? The brokerage?
- b. Licensed and unlicensed members
  - i. Clear boundaries on tasks
  - ii. Compensation difference
- c. Business relationships with consumers (*MGL 87AAA3/4, 254 CMR 3.00(13)*) – remember, it is the broker’s business!
  - i. Mandatory Consumer Licensee Relationship Disclosure
    1. Filled out by all applicable team members
    2. Update the form as relationships change
  - ii. Dual agency and designated agency – when does it happen?
    1. Team scenario: all team members are seller agent, if any team member represent a buyer on this transaction, then it would be dual agency
    2. Group scenario: one group member is a designated seller agent, any other group member can be a designated buyer agent
  - iii. Protection of confidential info is particularly important and delicate (especially if using designated agency of the group example)
  - iv. Discuss 2 different scenarios of a team/ group member listing a property with the brokerage:
    1. Listing as a designated seller agent,
      - a. not sharing any confidential information with other group members,
      - b. protection of confidential documents
      - c. other group members could be designated buyer agent (assumes brokerage uses designated agency)
    2. Listing as a seller agent, sharing all the details with all team members.
      - a. Any team member can step in as necessary

- b. All team members have to respect confidentiality
- c. If a team member represents a buyer, it will be dual agency

### 3. Broker supervision of the team/ group

- a. All team/ group members are affiliated with the brokerage who has an obligation of supervision
- b. All team/ group members are subject to the same company policies as everyone else in the office.
- c. A team/group cannot set up a separate escrow account (*254 CMR 3.00 (10)*)
- d. Concern: Is the team/ group operating as per the company policies or creating their own world?

Examples of items to pay attention to:

- i. Are members participating in company meetings?
- ii. Present at company training?
- iii. Following the company policy manual?
- iv. Are teams/ groups using third party vendors? Have they been approved?
- v. Is the team leader acting as the broker?
- e. Compensation: making sure that all money for the licensed team/ group members is coming from the broker
- f. Activities of unlicensed assistants –
  - i. Is the team/ group using the services of unlicensed persons, and for what tasks?
  - ii. Broker to make sure unlicensed assistants are not crossing legal boundaries
  - iii. Case study: how quickly can an unlicensed assistant step over the line
- g. If the team/ group works out of a separate location:
  - i. The location has to be licensed as a branch office by the broker
  - ii. A broker manager has to be responsible for that location
  - iii. Outside signage is the name of the brokerage
- h. Handling of records
  - i. Team/ group members are using company forms and company platforms, and not “hiding” their leads/ contacts/ clients/ contracts information
  - ii. The broker has access to all records at all times
  - iii. All files are complete
  - iv. Case study: use of cloud shared folders outside of the brokerage
- i. Team marketing (applies everywhere!):
  - i. Brokerage name always needs to be conspicuously displayed
  - ii. Best practice is to include the words team or group in the branding
  - iii. Always must be approved by the broker
- j. Team disputes are documented and addressed with the broker
- k. Addressing any complaints of misconduct – internal or external



## Resources

- MGL Chapter 112
- 254 CMR 2 (Licensure) and 3 (Professional Standards of Practice)
- MGL 93A – Unfair and deceptive practices
- MA Board of Registration FAQ on Teams – Nov 20, 2019: <https://www.mass.gov/doc/real-estate-teams-faqs/>