

SNAPSHOT REVIEW: UNIT THREE

BROKERAGE OPERATIONS REGULATION

OFFICING, SIGNAGE, AND BRANCH LICENSING

Office requirements

- Active brokers must maintain an office in a building of “statutory construction”
- Only brokers can own and maintain an office
- Must be registered with the DBPR
- Must have at least one enclosed room and have space to conduct private transactions
- Broker must keep any real estate files and records in office

Branch office registration

- All branch offices must be registered
- Registration for a closed branch office may not be transferred to the new branch office

Office signage

- Sign must be displayed at office entrance; must contain broker’s name and trade name with “Licensed Real Estate Broker” included; sales associates’ names not required but must be below broker’s name if included

Sales associate officing

- Sales associate must work under the direction, control, and management of the specified broker or an owner-developer

ADVERTISING REGULATIONS

Prohibitions

- False or misleading advertising; blind advertising; sales associate advertising or conducting business under own name

Telephone Consumer Protection Act

- No unsolicited calls, no robocalls, do not call compliance; opt-out option required; time of day restrictions
- Exemptions: nonprofits, political organizations, federal debt collectors, real estate licensee with buyer for “for sale by owner”, with established business relationship, with business inquiry within last 3 months

CAN-SPAM Act

- No unsolicited email with commercial message and without prior consent

Florida state telemarketing laws

- Apply to businesses located within Florida and parties outside Florida calling Florida residents.
- Real estate licensees exempt when calling a property seller about a yard sign or other advertisement placed by the seller
- Licensee not exempt if seller is a “for sale by owner” advertiser with his/her telephone number on the national do-not-call list

- Florida Telemarketing Act and Florida Telephonic Sales law – solicitors need license; time of day restrictions; no blocking caller ID; payments not limited to credit cards; caller has 30 seconds to identify him/herself; provide right to cancel info

Team advertising

- Team advertising to be done under employing broker’s supervision and name
- Team names may include the terms “team” or “group,” but may not include the following terms: Agency; Brokerage; Brokers; Company; Corporation; Corp; Inc; LLC; LP; LLP; Partnership; Property; Realty; or other term suggesting a separate entity

ESCROW REGULATIONS

Deposit regulations

- Trust accounts can only hold third-party funds with none of the licensee’s personal funds intermingled
- Sales associate receiving trust monies must give the funds to the broker no later than the end of the next business day, not counting Saturdays, Sundays, or legal holidays
- Brokers receiving transaction funds from sales associates must deposit funds into an escrow account within three business days, excluding Saturdays, Sundays, and legal holidays.

Disputed escrow funds

- If both parties make demands for the escrow funds, the broker must notify the FREC of the conflict within 15 business days. The broker should use the Notice of Escrow Dispute/Good Faith Doubt form found online
- If the funds are held by the broker, he or she can request that FREC issue an Escrow Disbursement Order

Alternative settlement procedures

- When the need arises to settle an escrow conflict, broker may employ settlement procedures of mediation, arbitration, or litigation

RECORDKEEPING, INSPECTIONS

- The broker must keep files and transaction records in the office; must be immediately available for inspection by the FREC; must keep records for at least 5 years

Monthly reconciliations

- The reconciliations must reflect the broker’s total trust liability (total of all deposits) being held

Document retention

- Brokers must retain at least one copy of all accounts and records relating to the business for at least 5 years from the date of receipt of any monies or the execution of any transaction contracts

Inspections and audits

- Specific points of inspection include the following: officing, signage, licenses and registration, agency disclosure, and escrow account audit

BUSINESS ENTITY REGISTRATION

- Brokers register their brokerages under the broker’s legal name or the business’s legal name

Entities that must register as brokers with DBPR

- Sole proprietorship; general partnership; limited partnership; for profit corporation; LLC

Entities not allowed to register

- Church organizations; joint ventures; business trusts; cooperative associations; unincorporated associations

TRADE NAMES

- Fictitious name used as business name; must be registered and appear on license, signage, advertising
- Sales associates prohibited from using trade name
- Licensee must be authorized to display name, insignia, or designation of an association

Brokers

- The trade name must appear on the broker’s license and registration, and all brokerage signage and advertising. It must be unique from any other business or trade name
- The broker may only register under one trade name and must have a new license issued if he or she changes the trade name

Sales associates

- Sales associates are not permitted to use a trade name or fictitious name. They must register under their real names and have only the real name show on the license

UNLICENSED ASSISTANTS; ALLOWED ACTIVITIES

- Unlicensed assistants may submit listings to MLS, assemble documents, deposit trust monies, compute commission checks, place signs on properties, prepare advertising for broker approval, and answer certain questions

COMMISSIONS

Prohibited practices

- Price fixing; sales associate contracting directly with principal; sales associate suing principal for commission; sharing commission with an unlicensed person; paying unlicensed person for performing real estate services

Kickbacks and referral fees

- Prohibited: acceptance of favors, advertising, money, gifts, etc. for referring clients to certain businesses unless all parties are informed, paying referral fee to tenant, sharing commission with foreign broker
- A licensed broker may pay a referral fee or share a commission with a broker licensed or registered in a foreign state

Commission-related liens

- Commercial brokers may place liens for unpaid commissions against an owner’s net proceeds from the sale of commercial property; does not apply to residential transactions

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