DEPARTING ASSOCIATE BROKERS AND SALESPERSONS: THE ISSUES

When an associate broker or salesperson decides to change brokers, the transition is often contentious. While it may be unrealistic to think that a better understanding of the law and some preplanning can result in a harmonious transition, hopefully it can make it a bit easier.

1. Clients Belong to the Firm

As a matter of Michigan law, clients belong to the brokerage firm and not to the individual associate broker or salesperson who is working with the client. Departing associate brokers and salespersons are ethically prohibited from pursuing clients of the firm they are leaving. Standard of Practice 16-20 of NAR's Code of Ethics provides as follows:

> REALTORS®, prior to or after their relationship with their current firm is terminated, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm. This does not preclude REALTORS® (principals) from establishing agreements with their associated licensees governing assignability of exclusive agreements.

A salesperson who tries to persuade a client to terminate his agency relationship with his old firm is interfering with an existing agency relationship in violation of Article 16. The last sentence of Standard of Practice 16-20 specifically acknowledges that brokers, associate brokers and salespersons may agree that the clients may be transferred to the agent's new firm. It may be easier for a broker to negotiate some type of commission sharing arrangement rather than try to prevent a firm client from following his/her departing agent. However, a broker is under no obligation to do so, as the client belongs to the firm as a matter of law. Remember, however, that the "old" listing firm cannot prevent a seller from terminating his listing agreement. The seller's termination may be wrongful and by doing so, the seller may be liable for breaching his contract – but the seller cannot be required to continue to work with the "old" firm. A broker

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is not required to release the seller from his legal obligation; the firm just cannot force the seller to continue to work with it. So, for example, if "Agent Smith" leaves "Firm A" for "Firm B" and convinces a seller to terminate his listing agreement with "Firm A" and relist with "Firm B," "Firm A" need not release the seller from his legal obligations, but cannot actually prevent the seller from moving to "Firm B." In this situation, Firm A could pursue Agent Smith for breaching the Code of Ethics and file a lawsuit against the seller claiming breach of contract damages.

2. Business Acquisitions

Occasionally one brokerage firm purchases the assets of the other brokerage firm. The assets of a firm would include, of course, the firm's listing agreements. However, since listing agreements are personal service contracts, in these instances, sellers would need to at least acknowledge and approve of the assignment of their listing agreement to a new firm in order to ensure that the agreement remains enforceable against the seller at the time of closing on the sale of the seller's property. A seller cannot be "assigned" to a different firm without his or her written consent.

3. Compensation for Pending Transactions/Existing Relationships

Even where clients remain with the "old" firm, there is still the question of whether associate brokers or salespersons are entitled to any compensation in connection with deals that are pending at the time they leave the "old" firm.

There are no reported Michigan cases describing a departing salesperson's entitlement to compensation for a sale that is pending or a listing that is in place at the time of his or her departure. When faced with this issue, courts will attempt to discern the parties' intent first by looking at any written contract or policies. If there is no writing, courts will consider

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testimony as to any oral promises that were made and/or as to the broker's past practices (*i.e.*, the broker's "course of dealing").

If a broker and salesperson wish to decide their own fate (as opposed to having a court decide it), they should agree contractually as to how these issues will be resolved in the event of the agent's departure. The best time and place to address these issues is at the beginning of the relationship when the parties first enter into an Independent Contractor Agreement. Many Independent Contractor Agreements differentiate between pending sales and open listings. For example:

> *As to commissions actually received by Broker pursuant to binding* ***purchase agreements in place prior to termination of the independent contractor relationship****, Agent shall receive _______ percent of the commission to which he/she would have otherwise been entitled if he/she was still employed by Broker.*
>
> *As to commissions actually received by Broker pursuant to* ***purchase agreements signed after the termination of the independent contractor relationship****, Agent shall receive _______ percent of the commission to which he/she would have otherwise been entitled if he/she was still employed by Broker. Agent shall not be entitled to any compensation in connection with purchase agreements signed during extensions of any such listings or on any re-listings.*

Some Independent Contractor Agreements differentiate between situations where the salesperson voluntarily leaves the company and situations where the relationship is terminated by the broker. For example:

> *Agent shall not be entitled to a commission on any sales which close after the termination of the independent contractor relationship,* ***unless the relationship is terminated by Broker without cause****, in which case Agent shall receive all commissions earned by such Agent prior to termination which are actually received by Broker. For purposes hereof, "earned" shall refer to transactions*

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with a binding purchase agreement in place at the time of termination of the independent contractor relationship.

An Independent Contractor Agreement may also provide for compensation in the case of pending cooperating transactions. For example:

As to commissions actually received by Broker pursuant to pending cooperating sales in place prior to termination of the independent contractor relationship, Agent shall be entitled to _______ percent of the commission to which he/she would have otherwise been entitled if he/she was still employed by Broker. For purposes hereof, a "pending cooperating sale" shall refer to a transaction with a binding purchase agreement in place at the time of the termination of the independent contractor relationship.

4. Covenants Not to Compete

Many brokers invest a lot of time and resources in either training new licensees to be skilled salespersons or, alternatively, training experienced licensees in more advanced sales techniques and processes. These brokers are understandably upset when a skilled agent they have worked to train ends up affiliated with a local competitor. Brokers often inquire as to whether they can address this problem by requiring associate brokers and salespersons to sign covenants not to compete.

Covenants not to compete or "non-competes" prohibit an employee from working for a competitor or from entering into a competitive business for a certain period of time and within a certain geographic area following the employee's departure. Covenants not to compete are not always enforceable. Lawsuits involving the enforceability of non-competes generally result in courts balancing the interest of an employer in protecting a legitimate business interest against the interest of the former employee in earning a livelihood using knowledge and skills acquired during prior employment.

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One point of discussion involves how the law on non-competes applies to brokers, associate brokers and salespersons. The relevant statute, discussed below, applies to "employers" and "employees." So, are independent contractors covered? To date, there is no Michigan case in which a broker has attempted to enforce a covenant not to compete against a departing associate broker or salesperson. However, in a case involving an independent contractor in a different context, the Michigan Court of Appeals has said that the answer is "yes."[1]

In Michigan today, non-competition agreements are disfavored as restraints on competition but are generally enforceable if they are "reasonable."[2] By statute, in order to be enforceable, a non-compete must:

1. Be reasonable as to its duration;
2. Be reasonable as to its geographical area;
3. Be reasonable as to type of employment or line of business.[3]

As indicated, an enforceable non-compete must be reasonable as to its duration. Evaluating this element involves a court's balancing the interest of an employer against the employee's interest in being able to earn a living using his talents and expertise. A reasonable covenant not to compete will provide minimal interference with the employee's ability to earn a living and be no longer than necessary to protect the employer's legitimate business interest.

[1] *Landscape Forms, Inc v Quinlan*, unpublished opinion per curiam of the Court of Appeals, issued October 5, 2012 (Docket No. 307116); 2012 WL 5290319.

[2] *Couter v Bastian Bros, Inc.*, 276 Mich App 498, 507-508; 741 NW2d 539 (2007).

[3] MCL 445.774a.

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A 6-month to 1-year duration for a covenant not to compete has generally been found to be reasonable.[4]

A reasonable geographical area is also necessary for enforcement of a covenant not to compete. A reasonable geographic area generally will be one that correlates with the employer's territorial market area or with the former employee's territorial responsibility. The test is whether competition by the ex-employee, at a specific location, adversely impacts the business of the ex-employer.[5] The geographic area which is restricted should be confined to the area in which the employer does business.

In deciding whether to enforce a non-compete, in addition to considering the reasonableness of the duration and geographic area, a court will consider the employer's particular business and the knowledge gained by the employee during the course of employment.[6] The purpose of a non-compete cannot be simply to prevent the ex-employee from competing with his former employer. Instead, a non-compete must protect against the employee having some type of unfair advantage in competing with his former employer.[7] Preventing the anticompetitive use of "confidential information" is a legitimate business interest.[8] For this reason, employers with trade secrets such as a testing lab or a software developer, for example, will have the best chance of convincing a court to enforce a

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[4] *A Complete Home Care Agency, Inc v Gutierrez,* unpublished opinion per curiam of the Court of Appeals, issued June 29, 2004 (Docket No. 246280); 2004 WL 1459450.

[5] *Owens v Hatler,* 373 Mich 289; 120 NW2d 404 (1964); *Brillhart v Danneffel*, 36 Mich App 359; 194 NW2d 63 (1971).

[6] *Whirlpool Corp v Burns,* 457 F Supp 2d 806, 812 (WD Mich, 2006).

[7] *United Rentals (North America), Inc v Keizer*, 202 F Supp 2d 727, 740 (WD Mich, 2002); *Follmer, Rudzewicz & Co, PC v Kosco,* 420 Mich 394, 402-404; 362 NW2d 676 (1984).

[8] *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 158; 742 NW2d 409 (2007).

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non-compete against a former employee, particularly if the non-compete is narrowly drawn to cover only those businesses that directly compete.

On the other hand, knowledge and skill that is acquired through experience does not give an employer an interest sufficient to enforce a non-compete.[9] An employee is entitled to use information and skills generally known in the trade even if the information and skills were acquired during the course of his employment.[10] A non-compete is not enforceable on the grounds that the employer taught the departing employee "everything he knows." As stated by the Michigan Supreme Court:

> It has been uniformly held that general knowledge, skill, or facility acquired through training or experience while working for an employer appertain exclusively to the employee. The fact that they were acquired or developed during the employment does not, but itself, give the employer a sufficient interest to support a [non-compete], even though the on-the-job training has been extensive and costly.[11]

In other words, an employer cannot use a non-compete simply to protect its investment in training an employee.

Michigan courts have allowed an employer to use a non-compete to prevent an employee from making use of client and customer contacts gained during the course of his or her employment. For example, the Michigan Court of Appeals enforced a non-compete against a physician who had practiced in a medical office for 20 months during which time he had established contacts and relationships "as a result of the goodwill of his employer's medical practice."[12] The Court found that in this context, a non-compete that prohibited the

[9] *St Clair Med,* 270 Mich App at 268.

[10] *Whirlpool Corp*, 457 F Supp 2d at 812.

[11] *Follmer*, 420 Mich 394, 402 (1984).

[12] *St Clair Medical, PC v Borgiel*, 270 Mich App 260 (2006).

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physician from setting up a competing medical practice within 7 miles for 1 year (or face a penalty of $40,000) was enforceable. The Court of Appeals took a similar position in a later case involving a salesperson in the publishing business, relying on what it described as a "fundamental principle" that:

> where an employee establishes unique contacts, relationships, and goodwill through employment, it is reasonable to bar that employee, through use of a sound non-compete agreement, from using those accomplishments to the possible detriment of the past employer and for the benefit of the new employer.[13]

On the other hand, the Michigan Court of Appeals rejected a similar argument and refused to enforce a non-compete against long-term title agency employees who had all left one title company for another.[14] The "old" title company had argued that during their employment, the departing employees had acquired detailed knowledge about the preferences and habits of the "old" company's clients and referral sources that had unfairly enabled them to take business away from the "old" company. The Court opined that given that there are "seldom repeats in the title industry," the most valuable contacts in the title business are not the actual clients themselves but the referral sources, and that these referral sources are readily known in any given community. In holding in favor of the former employees, the Court also relied in part on the fact that the non-compete did not simply prohibit the employees from soliciting business from the "old" company's referral sources, but purported to prohibit the employees from engaging in the title insurance business at all. The decision left open the possibility in this instance that the Court may have been willing to enforce a more narrowly tailored non-compete.

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[13] *Edwards Publications, Inc v Kasdorf*, unpublished opinion per curiam of the Court of Appeals, issued January 20, 2009 (Docket No. 281499); 2009 WL 131636.
[14] *Northern Michigan Title Company of Antrim-Charlevoix v Bartlett*, unpublished opinion per curiam of the Court of Appeals, issued March 15, 2005 (Docket No. 248751); 2005 WL 599867.

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In summary, non-competes are generally not favored, and the outcome is highly dependent on the nature of the employer's particular business. There is no Michigan precedent for upholding such an agreement in the context of a departing real estate associate broker or salesperson. Real estate brokers who are considering non-competes should hire a knowledgeable attorney to help them very narrowly tailor their contract to their particular business. While there is no guaranty that a Michigan court would enforce any non-compete in this industry, brokers will increase their chances by carefully narrowing the scope of their non-compete. Existing Michigan case law suggests that a non-compete aimed solely at prohibiting former salespersons from using client contacts gained during the course of employment may have a better likelihood of being enforced.

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SUPERVISION: NOT JUST AN OCCUPATIONAL CODE REQUIREMENT

We often talk about supervisory requirements under the Occupational Code. As Realtors® are well aware, the work of a real estate salesperson must be supervised by an associate broker.[1] Under the Code, "supervision" of a salesperson requires:

> (a) Direct communication in person or by radio, telephone, or electronic communication, on a regular basis.
>
> (b) Review of the practice of the salesperson.
>
> (c) Review of the salesperson's reports.
>
> (d) Analyses and guidance of the salesperson's performance in regulated activities.
>
> (e) Providing written operating policies and procedures to the salesperson.

If the broker has a branch office more than 25 miles away from the nearest branch of the main office, that office must be under the "direct" supervision of an associate broker who must be physically present during ordinary business hours on "a regular basis."[2] Remember that the direct supervision requirement is triggered by the existence of a branch office – that is, a physical location in addition to the main office which by advertisement or signs, is held out to the public as a place where clients and customers may do business. If there is a branch office, then that branch office requires the "physical presence" of an associate broker on a "regular basis" if the branch office is located more than 25 miles away from the main office. However, there is no requirement that agents work out of a branch office regardless of how far they may live from the broker's main office. Brokers must supervise these "remote" agents, but they do not need to be

[1] 339.2512f.
[2] 339.2505(3).

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"physically present" and may communicate with these "remote" agents "in person or by radio, telephone or electronic communication."

While many of us have had numerous conversations over what level of accessibility and availability is required to satisfy the supervisory obligations under the Occupational Code, what is often overlooked in these conversations is just what a supervisory broker should be doing. Brokerage firms must remember that they should supervise their agents primarily because, in the end they are liable for the actions of their agents. For this reason, supervision should mean more than being available to answer the questions that the agents bring to you. Supervision means paying enough attention to know that the Realtors® who are out there passing out business cards with the firm's name on it are ethical and know what they are doing. Perhaps the best way to understand the proper role of a supervisory broker is to consider the types of situations in which a salesperson's actions can create liability on behalf of the firm. This article will discuss four such scenarios.

Scenario 1. *Realtor® Smith was the sole owner of a small brokerage firm that she started 20 years ago. The firm currently had five salespersons, and Smith was the only associate broker. Smith wanted to retire, and one of her salespersons was interested in purchasing the company. The salesperson did not have an associate broker's license and would not have enough experience to qualify for an associate broker's license for 16 months. Smith agreed to allow the salesperson to continue to name Realtor® Smith as the firm's sole associate broker after closing until such time that the buyer could qualify for an associate broker's license. The office manager was given a stamp with Realtor® Smith's signature that he could use to "sign" checks and documents. After closing, Realtor® Smith spent the next six months or so traveling around the country. When she returned to town, she learned that the buyer-salesperson had*

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been "borrowing" funds from the firm's trust account. Of course, the checks that had been issued from the trust account were "signed" by Realtor® Smith (using the signature stamp she had left with the office manager).

Obviously, Realtor® Smith should have never agreed to act as a supervisory broker in name only. Rule 313 provides that "checks drawn on a trust or escrow account must be signed by a broker or associate broker." The assumption behind this requirement is that a broker should be overseeing the trust account. The primary reason that a broker should be overseeing the trust account is not because the Department might find the firm in violation of the Code if this does not occur, but because if there are funds missing from the trust account, the company will be responsible. It does not matter that the firm did not have any knowledge of the theft and that it called the police as soon as it became aware of the theft. It is the company's trust account, and the company will be liable if money is missing. For this reason, if you handed someone a signature stamp five years ago, and that same person signs all checks, receives all bank statements and is solely responsible for balancing the books, you probably need to think about developing a new system of checks and balances.

Scenario 2. *Realtor® Jones is the supervisory broker for a midsize firm. Several of the salespersons licensed through the firm work solely as licensed personal assistants for the firm's largest producer, Salesperson Green. Realtor® Jones does not know the terms of employment between Salesperson Green and her licensed personal assistants. While he has attempted to broach this topic with Salesperson Green from time to time, Salesperson Green appeared to resent this intrusion, so Realtor® Jones has not pushed it. After Salesperson Green fired one of her licensed personal assistants, the assistant filed an unemployment claim with the State of Michigan. Realtor® Jones then discovered that Salesperson Green had been paying this*

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assistant in cash on an hourly basis for years. Salesperson ® Green had not been doing any withholding, and the licensed assistant had not been paying federal or state income taxes.

Licensed assistants who are paid on an hourly basis are employees for purposes of federal and state withholding, unemployment, workers compensation and all other purposes. In order to qualify as an independent contractor relationship, both of the following conditions must be satisfied:

> (i) A written agreement exists in which the real estate broker does not consider the associate real estate broker or real estate salesperson as an employee for federal and state income tax purposes.
>
> (ii) A least 75% of the annual compensation paid by the real estate broker to the real estate broker or real estate salesperson is from commissions from the sale of real estate.[3]

A licensed assistant who is paid on an hourly basis does not qualify as an independent contractor. It does not matter what release forms these assistants may have signed to the contrary; as a matter of law, they are employees. And when a disgruntled employee doesn't pay his or her taxes or seeks unemployment (and this will happen), there will be fines and penalties (and legal fees) incurred in order to sort all of this out. Admittedly, working through all of the various issues with teams is complicated, and often these teams do not welcome the firm's inquiries. For this reason, it appears that sorting out team operational and legal issues is on many firms' "do later" list. Now is the time to sit down and talk about these issues with your lawyer and accountant.

Scenario 3. *Main Street Realtors is a designated agency firm. One day they are contacted by a salesperson who specializes in representing buyers of expensive homes. The*

[3] MCL 339.2501(h).

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salesperson wants to leave the firm that he is at and join Main Street Realtors. The company is thrilled, and Salesperson White joins the firm. Salesperson White pretty much keeps to himself, and unfortunately, after only a few months, announces that he has decided to relocate out of state. After his departure, Main Street Realtors is approached by an attorney who insists that it return an $89,000 commission it had received on an in-house transaction that Salesperson White had closed before he left the firm. It seems that Salesperson White did not "believe in" buyer's agency contracts or agency disclosure forms and felt that his elite clients would be insulted if he tried to get them to sign such forms. Since Salesperson White's buyers did not signed buyer's agency contracts, by default, they had an agency relationship with all the agents who worked at Main Street Realtors. Unbeknownst to the listing agent, the in-house transaction he had worked on with Salesperson White was a dual agency situation and, of course, a nonconsensual dual agency situation. The attorney for the seller on this transaction correctly points out that as a matter of law, a firm who participates in a nonconsensual dual agency situation forfeits its right to a commission.

Clearly, the point here is that you need to make sure your agents understand agency and are following the law. A supervisory broker should have access to an agent's files. At a minimum, procedures should be set up so that files are spot checked. Does the agent use buyer's agency forms? This is important for all firms and is absolutely critical for designated agency firms. Are dual agency relationships handled correctly? Many firms have a policy whereas commissions are not paid until a signed agency disclosure form is produced. This is a good policy. A better policy would be to also provide for a detailed review of a file from time to time. An agency disclosure form may have been provided – but was it completed correctly and timely provided?

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Scenario 4. *Salesperson Brown, who is new in the business, obtains her first listing. It is a small home. Salesperson Brown advertises her new listing on her personal business page as "perfect for newly marrieds or other empty nesters." Main Street Brokerage receives a complaint in which it is asserted that Salesperson Brown has violated both the Fair Housing Act and the Michigan Elliott-Larsen Civil Rights Act by discriminating on the basis of familial status. Realtor® Jones, the supervisory broker at Main Street Brokerage, argues that the Company should not be liable because Salesperson Brown's comments were not posted on the Company's website or included in any of the Company's advertising. Realtor® Jones also produces evidence that Main Street Brokerage conducts Fair Housing Act seminars annually that its agents are all required to attend. For these reasons, Realtor® Jones argues that Main Street Brokerage should not be liable for the actions of one rogue (inexperienced) agent.*

Unfortunately, Realtor® Jones is simply wrong. The law is clear – the United States Supreme Court has spoken. If an agent violates the Fair Housing Act, the agent's firm is liable for that action.[4] This is true regardless of how much effort the firm has put in trying to train its agents. For this reason, firms are strongly encouraged to monitor their agents' advertising.

Scenario 5. *Tom Smith is a principal broker who has an unlicensed assistant whose responsibilities include setting up lockboxes at new listings. During one of these deliveries, Smith's assistant had a brief conversation with the sellers. The conversation somehow turned to a discussion of a competitor agent. Smith's assistant repeated some negative things she had heard about that agent, at least some of which were untrue. It turns out that the competitor agent is a neighbor of the sellers and the sellers told that agent what Smith's assistant had said*

[4] *Meyer v Holley*, 537 US 280 (2003).

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about her. That agent has filed an ethics complaint against Smith under Article 15 (which covers knowingly or recklessly making false statements about other real estate professionals). Smith did not participate in this conversation nor was he the source of his personal assistant's misinformation about the competitor agent. Shouldn't this ethics complaint against Smith be dismissed?

No. Failure to supervise an unlicensed assistant can result in an ethics violation. Under the Code of Ethics and Arbitration Manual, a Board may take disciplinary action against any member for any acts of any persons who are not themselves Realtors® but who are employed by or affiliated with that Realtor® member. Lack of knowledge by the Realtor® of such person's conduct is not a defense but only goes to mitigation of the discipline imposed.

Scenario 6. *Broker Smith is the sole principal broker in Main Street Realty. Salesperson Green is the top producer at Main Street Realty. Salesperson Green has three licensed personal assistants, and the four of them conduct business in the name, "Go Green Realty." "Go Green Realty" is not a legal entity. Salesperson Green is involved in the sale of a house that has significant structural issues. The buyer of that home sues for fraud, naming Salesperson Green, "Go Green Realty" and "Main Street Realty." Can Salesperson Green be held personally liable?*

It is possible that Salesperson Green may be personally liable. A corporate shield is available only when business is conducted in the actual name of the corporation – here, for business conducted in the name, "Main Street Realty." In this scenario, business was conducted in the name of a non-entity, "Go Green Realty," which does not afford any liability protection. Moreover, Main Street Realty itself may have a problem as its insurer may take the position that the company's insurance coverage is not available because the business in question was not

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conducted in the name of the corporation, Main Street Realty. Advertising in the actual name of the brokerage firm is important not just because it is required under the Occupational Code. Brokers who do not supervise the way their teams advertise are opening up the firm and the individual team members to significant liability issues.

Scenario 7. *Best Ever Realty has a big producer salesperson, Katie Jones, who has six licensed assistants, all of whom work together as a team. The team has its own office, which is not open to the public but where team members conduct most of their behind-the-scenes work. Bob White, the principal broker of Best Ever Realty, has only met one or two of Katie Jones' licensed assistants. In order to simplify things from an operational standpoint, Katie Jones and Bob White have agreed that any questions or concerns that her licensed assistants may have will be filtered through Katie. If a licensed assistant has a question that Katie cannot answer, then Katie will forward that inquiry along to Bob White. None of Katie's licensed assistants are permitted to contact Bob White directly. Katie is solely responsible for reviewing "her" licensed assistants' work and making all hiring and firing decisions.*

Bob White and Best Ever Realty are in violation of the Occupational Code which prohibits a broker from contracting with a non-principal broker or salesperson in any way that limits its authority to supervise any licensee.[5] Realtors® should keep in mind that from DLARA's point of view, there is no such thing as a "licensed personal assistant." From DLARA's point of view, every real estate licensee within a brokerage firm works for the brokerage firm, and it is the brokerage firm that is responsible for supervising every licensee. If

[5] MCL 339.2512f(2).

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a salesperson has licensed personal assistants that the broker has never met or spoken with, obviously the broker is not meeting its obligation to supervise that licensee.

CONCLUSION

Supervision means more than answering questions that your agents bring to you. A firm should adopt a policy to help agents understand and identify potential problems and to seek help when those situations first arise. Firms should implement policies and procedures to protect the firm. A few suggestions:

1. Do not put any one person solely in charge of the trust account. The same person who issues the checks should not balance the account at the end of the month.
2. Implement a policy whereby if an earnest money deposit check bounces, someone in addition to the salesperson who is involved in the transaction is told.
3. Consider a policy whereby salespersons are required to disclose dual agency transactions when they first happen and provide for ongoing supervision of such transactions by an associate broker who understands dual agency issues.
4. Consider a policy whereby any agent who is buying or selling property from a client or customer of the firm is required to work through a supervisory broker.
5. Encourage agents to consult with supervisory brokers at the beginning of any dispute between the buyer and the seller over whether or not there is a binding contract. This is particularly important whenever a seller is trying to terminate one purchase contract to accept a better offer.
6. Do not think of file review as simply a mechanism for making sure the Occupational Code requirements are being met. You should also be looking at whether your agent knows what he or she is doing.

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7. When spot checking a file, look at the purchase agreement and the addendums. Are they clearly and consistently written? Are all the blanks filled in? If a file has more than one signed purchase agreement and/or contradictory addendums and "side agreements," this should be a red flag.
8. When reviewing a file, don't just check to make sure that it contains signed agency disclosure forms. Were the agency forms correctly completed? Are the agency disclosure forms consistent with one another and with any agency disclosure made in the purchase contract or other documents?
9. Review every agent's advertising from time to time. Set aside a time during the week when you look to see how your firm is being presented on social media.
10. Make sure that every agent in your office understands wire fraud. Adopt a policy whereby every buyer is provided with a copy of the Wire Fraud Notice form. Adapt a policy prohibiting agents from receiving or forwarding wire instructions – clients and customers should always be told to deal with the title company/lender directly.

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