

Laurel D. McAdams and Joan m. Sobeck,
with Bart Stockton, Contributing Editor

4th EDITION

TEXAS

REAL ESTATE BROKERAGE: A MANAGEMENT GUIDE



Dearborn®
Real Estate Education

Texas Real Estate Brokerage

A Management Guide

4th Edition

Laurel D. McAdams and Joan m. Sobeck, with Bart Stockton, Contributing Editor

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional advice. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

TEXAS REAL ESTATE BROKERAGE: A MANAGEMENT GUIDE 4TH EDITION

©2024 Kaplan North America, LLC

Published by DF Institute, LLC, d/b/a Dearborn Real Estate Education and

Kaplan Real Estate Education

1515 West Cypress Creek Road

Fort Lauderdale, Florida 33309

All rights reserved. The text of this publication, or any part thereof, may not be reproduced in any manner whatsoever without written permission from the publisher.

10 9 8 7 6 5 4 3 2 1
ISBN: 978-1-0788-4280-8

10 9 8 7 6 5 4 3 2 1
ISBN: 978-1-0788-4736-0 (custom)

CONTENTS

Acknowledgments	viii
-----------------------	------

UNIT 1

Introduction.....	1
Learning Objectives	1
Key Terms.....	1
Introduction.....	1
Anatomy of a Sales Agent/Broker Relationship	2
The Anatomy of the Independent Contractor Agreement	2
Sales Agent/Broker Responsibilities.....	7
Sales Agent Responsibilities	7
Broker Responsibilities in Residential Resale Brokerage	10
Conclusion.....	12
Summary.....	12
Unit 1 Quiz.....	14

UNIT 2

Starting a Brokerage Business	15
Learning Objectives	15
Key Terms.....	15
Introduction.....	16
Economic Factors.....	17
Political Factors.....	20
Sociological Factors.....	22
Life Cycles	25
Starting New vs. Buying Existing.....	26
Basics of Purchasing a Business.....	28
Legal Ownership	29
Mode of Operation	32
Market Identity	36
Internal Structure	43
Chain of Command.....	47
Job Descriptions.....	48
Informal Organization.....	48
Conclusion.....	50
Summary.....	50
Unit 2 Quiz.....	53

UNIT 3

Ethical and Legal Business Practices	55
Learning Objectives	55
Key Terms.....	55
Introduction.....	56
Canons of Ethics	56
Business Ethics	62

Professionalism	65
Professional Standards	65
Real Estate Associations.....	66
Real Estate License Law	71
Deceptive Trade Practices Act.....	73
Responsibility of the Real Estate Brokerage.....	78
Unfair Competition Laws	81
Unfair Business Practices.....	84
Americans with Disabilities Act.....	88
Fair Housing.....	89
Agency and Representation	97
Prospecting Laws, Do-Not-Call, Do-Not-Fax, and Anti-Spam Laws.....	108
Contracts.....	113
Disclosures.....	120
Sherman Antitrust Act	122
Real Estate Settlement Procedures Act (RESPA)	125
Protecting the Institution.....	129
Conclusion.....	135
Summary.....	136
Unit 3 Quiz.....	142

UNIT 4

Analyzing the Market and the Competition	145
Learning Objectives	145
Key Terms.....	145
Introduction.....	145
Analyzing Business Opportunities	148
Geographic Markets	148
Service Markets.....	150
Beyond Residential Brokerage	151
Agency Services	152
Analyzing the Market.....	153
Analyzing the Competition	156
Analyzing Your Organization.....	161
Planning Rationale.....	173
Mission.....	175
General Objectives	175
Goals	176
Strategies.....	177
Contingency Plans	178
Putting All the Pieces Together.....	179
Introduction to Implementing a Business Plan	180
Tactical Planning	180
The Business Plan	181
Conclusion.....	184
Summary.....	185
Unit 4 Quiz.....	187

UNIT 5

Managing Risk.....	189
Learning Objectives	189

Key Terms.....	189
Introduction.....	190
General Operating Budget.....	190
The Financials and Accounting	199
How Much Money Is Needed?.....	201
Record Keeping.....	205
Conclusion.....	209
Summary.....	210
Unit 5 Quiz.....	211

UNIT 6

Marketing Best Practices.....	213
Learning Objectives	213
Key Terms.....	213
TREC Advertising Rules	213
The Company's Advertising/Marketing Plan.....	216
Introduction to Policies and Procedures.....	230
Policies and Procedures.....	231
TREC's Policy and Procedures Manual Requirements	237
Social Media Marketing.....	237
Where Broker Supervision Starts—The Company Policies and Procedures Manual.....	245
Conclusion.....	252
Summary.....	252
Unit 6 Quiz.....	254

UNIT 7

Management Style and Structure.....	255
Learning Objectives	255
Key Terms.....	255
Introduction.....	255
Leadership	258
Managing People.....	261
Management Styles.....	268
Decision-Making.....	270
Management Structure	273
Conclusion.....	283
Summary.....	283
Unit 7 Quiz.....	285

UNIT 8

Recruiting and Hiring.....	287
Learning Objectives	287
Key Terms.....	287
Introduction.....	288
Employment Relationships	289
Federal and State Employment Guidelines	295
Compensation Management	302
Employment Process.....	308
Recruiting Sales Agents.....	317
Selecting Sales Agents.....	322
Selecting a Broker	324

Conclusion.....	325
Summary.....	326
Unit 8 Quiz.....	329

UNIT 9

Professional Brokerage Competency and License Holder Productivity.....	331
Learning Objectives	331
Key Terms.....	331
Introduction.....	332
Introduction to Managing Employees and Independent Contractors	332
Independent Contractor or Employee?	333
Performance Management.....	335
Performance Appraisals	340
Introduction to Orientation Programs	343
Orientation Programs	344
Introduction to Training Programs	348
Training Programs	348
Business Meetings and Retreats.....	352
Personal Interaction.....	355
Retention.....	362
Resignation and Termination	366
Introduction to Productivity Management.....	371
Productivity Coaching With Personal Selling.....	371
Agent Business Plans.....	378
Personal Marketing Plan	386
Time-Management Plan	394
Conclusion.....	398
Summary.....	398
Unit 9 Quiz.....	401

UNIT 10

Practical Business Considerations	403
Learning Objectives	403
Key Terms.....	403
Introduction.....	403
Financial Controls	405
Monitoring the Business	407
Management of Information	411
Maximizing Income	412
Minimizing Expenses.....	418
Conclusion.....	423
Summary.....	424
Unit 10 Quiz	426

UNIT 11

Looking Into the Future.....	427
Learning Objectives	427
Key Terms.....	427
Organic Growth.....	427
Inorganic Growth.....	431
Looking Into the Future and Long-Term Planning.....	435

Conclusion.....	440
Summary.....	440
Unit 11 Quiz	441

UNIT 12

Broker/Sales Agent Roles and Responsibilities	443
Learning Objectives	443
Key Terms.....	443
Culture	444
Support.....	445
Training.....	446
Listing Appointments	456
Marketing and Selling Listings	459
Ongoing Training.....	463
Sales Agent Marketing	465
Sales Activities Allowed.....	467
Geographic Competency.....	468
Professionalism	470
Culture	472
Competency	475
Contracts and Addenda	477
Documentation.....	478
Rebates and Referrals.....	479
Training and Resources.....	480
MLS.....	481
Proper Pricing	482
Geographic Competency and the Law.....	483
How to Become Geographically Competent	488
How Many Real Estate Licensees are Sued Each Year?	497
Citing and Quoting Sources	497
Sources of Liability for Texas License Holders.....	500
Real Estate Professionals Can Help Protect Clients from Real Estate Fraud.....	511
Conclusion.....	515
Summary.....	516
Unit 12 Quiz	519
 Glossary.....	 520
Answer Key	533
Index.....	539

ACKNOWLEDGMENTS

This text is based on the popular book *Real Estate Brokerage: A Management Guide*, by Laurel D. McAdams and Joan m. Sobeck, published by Dearborn Real Estate Education. We've also used the expertise of Chris Grover by using selections from his book *Sales and Marketing 101 for Real Estate Professionals*, published by Dearborn Real Estate Education.

We'd like to thank Bart Stockton for his work in organizing and expanding this material, as well as John Mathis for his work reviewing the text.

UNIT

Introduction

LEARNING OBJECTIVES

When you have completed this unit, you will be able to accomplish the following.

- › Discuss the anatomy of sales agent/broker relationships.
- › Discuss sales agent/broker responsibilities.

KEY TERMS

compensation plan
delegated supervisors
designated brokers

independent contractor
agreement
IRS three-item test

quarterly IRS installments
straight commission split

INTRODUCTION

The sales agent/broker relationship is based on some common objectives:

1. Identifying a person's needs and assisting them in achieving them.
2. Enabling individuals to make good business decisions and prosper.
3. Striving to be knowledgeable and competent.
4. Answering an individual's questions and providing advice to make difficult decisions easier.
5. Protecting and promoting other people's interests, sometimes over their own interests.
6. Understanding that cooperation and collaboration achieve more and better results for themselves and others.

Sales agents do the above for and with consumers. Brokers do the above for and with consumers, and also for and with sales agents.

Learning Objective: Discuss the anatomy of sales agent/broker relationships.

ANATOMY OF A SALES AGENT/BROKER RELATIONSHIP

Ultimately, the sales agent/broker relationship is a business relationship. Like all business relationships, it involves cooperation and collaboration. Business relationships also involve competition and sometimes conflict. Relationships may grow as much for the competition and conflict as the cooperation and collaboration. Often, if the relationship survives the conflict, it becomes stronger. It may help to identify potential sources of conflict ahead of time so that you can address these issues and come to a resolution in advance.

For sales agents and brokers, that agreement is based on the nature of the legal relationship that is the foundation of the relationship. Real estate sales agents are typically independent contractors, but they can be employees. We will discuss the difference in a later section of the course when we discuss the real estate license law.

For now, we are going to explore the real estate independent contractor agreement in terms of the relationship it creates and parts of it that impact the sales agent and broker the most. We are going to explore the anatomy of this agreement on a deeper level than most sales agents, and even some brokers, never get to.

THE ANATOMY OF THE INDEPENDENT CONTRACTOR AGREEMENT

While the Texas REALTORS® have a form that it makes available to its members, there is no single, standard form for this agreement. Brokers typically initiate the **independent contractor agreement** and many have their legal counsel draft a document for their exclusive use. Even the Texas REALTORS® form can be modified by brokers. When a sales agent indicates that they want to be sponsored by a particular broker, most of them do not know that they are a party to this agreement and may provide input into what it contains. The reality is, particularly for new sales agents, if a sales agent does not want to enter into the independent contractor agreement that the broker wants to use, they are probably not going to be sponsored by that broker. Sales agents should be aware that parts of the contract that may not be balanced in their favor. Armed with that knowledge, they can better identify the most suitable brokerage to sponsor them.

Licensing

One of the first sections in the independent contractor agreement that both sales agents and brokers should note is called license and good standing, or simply licensing.

This clause outlines the consequences if the license of the sales agent is revoked, suspended, or not renewed on time. Consequences include:

- The sales agent cannot perform activities requiring a license.
 - If a sales agent has sold a property and before the close of escrow, the sales agent's license expires, the broker cannot pay their commission at the close of escrow until they renew their license.
 - They cannot work with buyers or sellers until the license is active.
 - They are out of business.
 - Some brokers include in the licensing clause that the sales agent's employment is terminated the date the license is not active.

- If the broker's license is inactive, for any reason, all operations at the brokerage must shut down until the broker or another qualified broker with an active license is in place. Until a broker with an active license is in place, all sponsored sales agent's licenses are inactivated as well.

Compensation for sales agent

This section of the agreement is called a number of different names. In some forms it will be described simply as, "commissions," while others refer to it as a "schedule of transaction fees" or "associates fees." This is an important clause for sales agents because it identifies how and when you are going to be paid for the services you provide to the sponsoring broker, and then indirectly, to the public.

That qualification is important for everyone, but especially for new licensees, to understand. This course will provide a longer explanation later, but for purposes of clarity now, the sponsoring broker is the agent of the consumer. Sales agent licensees and broker licensees sponsored by another broker are subagents of the sponsoring broker. This means the entire commission payable in the transaction to the sponsoring broker belongs to the sponsoring broker. Sponsored licensees have no right to that commission directly. The sponsoring broker receives the full compensation and then divides it based on what the agreement says.



CASE STUDY The Missing Commission Check

Diva is a new sales agent. She is on top of the world and feels that she has found her calling. Everything is wonderful.

One day, her employing broker Hank asks to see her in his office. When she sits down, he closes the door and says, "Diva, I have some bad news. You know that expensive house you sold on View Street? Well, the seller got a better offer and he withdrew from the escrow and cancelled your buyer's contract. The first thing we have to do is to notify your buyer. I know it's hard, but do you think you can handle that?"

She says she can and then he goes on to say, "I've discussed the matter with the listing agent and told him that we will analyze what course of action we are going to follow in this situation. We have the right to sue for our commission. My informal policy is that I don't like suing people because I think it harms our reputation in the marketplace. How do you feel about it?"

Diva responds, "I was really counting on that commission. I haven't made any money in the six months that I have been working in real estate. And, I've had to spend a lot of money on board dues, lock boxes, and other things so I really need that paycheck. If you're not willing to sue, I am. It isn't fair for a seller to back out like that at the last minute. My buyers are going to be devastated."

Hank, the broker looks down, and then says, "Well, I hate to break it to you, but you can't sue. I'm the broker and the money is owed to me. I'm the only one who has standing to sue and I don't want to." Diva storms out of Hank's office and slams the door.

Questions

1. Who gets the commission?
2. What document would have resolved this dispute between Diva and Hank before it arose?
3. Because it wasn't addressed in the beginning of the relationship, is it more likely to terminate the relationship by coming up later?
4. If Diva did attempt to bring suit against the defaulting seller, what response would the court have to her claim?
5. Is this issue something that a new agent would know to ask about in an interview or at the time they are presented with an independent contractor agreement?

Resolution

The commission legally belongs to the sponsoring broker. Ideally, the independent contractor agreement would specify who the commission belongs to. An example of this of one independent contractor agreement reads as follows:

“All commissions that broker/sales agents earn for providing brokerage services to clients and customers are payable to and belong to broker.”

This same agreement goes on to provide that:

“Broker is not liable to sales agent for any commissions that are not collected from a client or customer. Broker retains the rights to enforce or not to enforce any agreement for brokerage services with a client or customer.”

Most new licensees would not think to ask about commissions and, even if it was outlined in the agreement, do not read or understand the agreement sufficiently to ask questions about its contents. Additionally, they may not want the broker to think they don't know because they are new.

There are a number of ways this particular issue can be addressed contractually between a sales agent and a broker. One is if the broker does not want to sue and the sales agent does, the agreement may state the broker will facilitate the sales agent's desire to sue by lending their name to the suit. The sales agent agrees to pay for all costs of the suit upfront and if the broker wins, they will share the proceeds and the expenses on the same basis as the commission split. Most brokers want the right to approve the attorney that represents them.

Straight commission split

Now that we've addressed ways outlines in an independent contractor agreement that can result in an agent not getting paid, let's focus on ways in which they can get paid. There are probably as many compensation plans as there are brokerages. The simplest **compensation plan** is a **straight commission split**.

For example, let's say the selling price of property is \$400,000 and the total percentage of commission payable is 4%.

$$\$400,000 \times 4\% = \$16,000.$$

From there it can start becoming more complex for the new sales agent. They have been dreaming of selling a house and getting a big commission of \$16,000. Here is the reality that perhaps no one told them about.

First, that \$16,000 is typically split between the listing broker and a selling broker. The split is often 50/50. Depending upon market conditions, sometimes it is split 60/40 or even more.

$\$16,000 \times 50\% = \$8,000$ to the listing broker and \$8,000 to the selling broker.

Now, based on the commission schedule in the independent contractor agreement, it is split again between the sponsoring broker and the sponsored sales agent. This typically starts out for a new agent at 50/50:

$\$8,000 \times 50\% = \$4,000$ to the sponsoring broker and \$4,000 to the sales agent.

Sometimes the agreement provides that certain expenses are to be paid out of commissions payable to the sales agent. Examples of these expenses include a proportionate share of E&O insurance, advertising specific to the sales agent prepaid by the brokerage along with brokerage advertising, a proportionate share of closing assistant's costs, etc. Often, if these issues have not been addressed before the contract is entered into and a new sales agent receives their first commission, they're in for a surprise if they are expecting to receive \$16,000 and end up getting a check for \$3,000 to \$4,000.

Other independent contractor agreement issues

The typical independent contractor agreement is four to eight pages long and should include a variety of items that are important for both the sales agent and the broker. The following are typically the most important.

Income taxes

As independent contractors, real estate licensees are responsible for paying their income taxes in quarterly installments during the year instead of having an employer withhold the amount owed from each paycheck. This is not something that most individuals are familiar with and it can get them into serious trouble. For example, if sales agents don't pay their **quarterly IRS installments**, they may not have the reserves to catch up at the end of the year, as they have likely spent their income. This can result in significant penalties and interest on the unpaid amount.

From the brokerages' standpoint, if the agents are independent contractors, it doesn't have to contribute to Social Security (SSA) payments as it would if agents were employees. However, if the IRS audits their business and determines that sales agents are being treated as employees instead of independent contractors, the brokerage may be liable for not just present taxes and SSA payments, but also past ones as well. The **IRS three-item test** helps to determine independent contractor status for real estate agents:

1. The agent must have a real estate license.
2. The agent must be paid on the basis of sales or productivity, rather than hourly.
3. Agent services must be performed under a written agreement that states that they will not be treated as employees.

The ultimate test is the degree of control the employer has over the activities of the independent contractor. Generally, an independent contractor is only responsible for the results produced, and not the manner in which the results are produced. An employee is told what to do, when to do it, and how to do it.

A brokerage has a vested financial interest in ensuring that the three-element test is met. Most states, including Texas, require brokers to supervise the activities of their sponsored agents.

ABOUT DEARBORN REAL ESTATE EDUCATION

For over 60 years, Dearborn has set the standard for real estate education. As a full-service educational publisher, Dearborn offers the best content and support services in the industry. With unsurpassed experience and understanding of the real estate training industry, you can ensure your success with Dearborn.

The strength of our experience lies in our dedication and ability to continually produce the highest quality, up-to-date real estate educational and training content. Our seasoned authors have years of real-world experience and our content spans every stage of a real estate professional's career from prelicensing, exam prep, and continuing education to broker, appraisal, home inspection, and professional development.

DO YOU HAVE WHAT IT TAKES TO BECOME A DEARBORN AUTHOR?

Dearborn is constantly on the lookout for new and creative authors, titles, and educational markets. We actively pursue new authors who have a unique perspective on the changing face of real estate. If you have an idea for a product, let us know—we're ready to be your partner in publishing!

Visit www.dearborn.com/authors for more information.

Dearborn®
Real Estate Education

www.dearborn.com, 800.972.2220

For comments or queries about this product,
please email us at contentinquiries@dearborn.com.



ISBN: 978-1-0788-4280-8



9 781078 842808