

Legal Questions & Answers

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Question: One of our new agents is studying for her real estate license. However, we have discovered that she is a partial owner of a property management company. Are we liable for work that she performs for the property management company?

Answer: A licensee should not perform licensed real estate activity for more than one brokerage or property management company. However, nothing prevents a licensee from holding an ownership interest in one company but engaging in licensed activity for another. Thus, this broker may be licensed with your brokerage, but cannot perform any tasks requiring a license for the property management company. Should you have any specific concerns about this matter, you may wish to consult with the Real Estate Agency.

Question: We have an agent leaving our brokerage who is currently co-agent with another agent in our office on three pending sales. The co-agency developed so that the departing agent could team up with a more experienced agent to assist with the transactions. The co-broker has taken the lead on all three transactions and would like to stay with our brokerage. The new brokerage is pushing for our departing agent to continue the co-agent relationship so they can benefit from the exposure provided by the three pending sales. It is my understanding that Oregon real estate law prevents this type of arrangement.

Answer: Transactions typically belong to the principal broker of the brokerage with which the individual broker is licensed. However, independent contractor agreement between the principal broker and an individual broker may allow for transfer of transactions to the extent the clients are agreeable. You may wish to first consult with the departing broker's independent contractor agreement. In the absence of any agreement allowing transfer of the transactions to another brokerage, they will remain with your office.

Notwithstanding this fact, you can agree to allow the departing broker to continue to be involved as a co-broker with the broker in your office. However, such an arrangement carries some risk, as you are not overseeing the activities of the departing broker. In addition, such arrangements can be confusing, as the client may not understand who is responsible for which functions. In order to avoid such risks, it may be prudent for the brokers to agree on a referral fee, with the transaction either remaining at your brokerage and the departing broker receiving a referral fee, or the transactions being transferred to the new brokerage with the broker in your office being paid a referral fee.

If the transaction is to be transferred or should the brokers remain co-brokers in the transaction, such arrangement will necessitate the written consent of the parties. In addition, the sales agreements will need to be amended to reflect that the broker and/or brokerage has changed. Furthermore, it would be prudent to have the listing broker acknowledge the new arrangement in order to ensure that a commission is owing to the appropriate party.