



Requirements for real estate teams

New Bylaw for teams

In 2013, the Commission Board of Directors struck a task force to review the practice and advertising of real estate teams, due to their increasing popularity and their lack of address in the Bylaw.

The task force conducted a review of team advertising, agency obligations as they relate to teams, as well as contract law as it relates to industry members working as a team. The task force drafted proposed bylaw, which was presented to the Board of Directors at the December 2013 meeting, and approved.

Current teams have until July 15, 2014 (six months) to bring existing advertising and signage into compliance with the new bylaw. Any new advertising or signage that teams create must immediately comply with the new bylaw.

What is a team?

The bylaw defines a team as:

Bylaw 144A

TEAM is two or more industry members licensed with the same brokerage, including licensed assistants, who

- a) Work together on a regular basis to provide real estate brokerage services;
- b) Represent themselves to the public as being part of one entity; and
- c) Designate themselves by a collective name, such as team or group.

A team member shall belong to one team only and shall not provide real estate services independently of the team.

What is not a team?

A team is not one industry member. In the review of team advertising, the task force noted a number of “teams of one”, websites in which the content was written as though it was a team offering real estate services, i.e. “contact us”, “we pro-

vide”, “our services”, etc.; however, there was no team, just a single industry member. Portraying a sole industry member as a team is misleading.

A team is not one industry member and an unlicensed assistant. If only one individual is capable of trading in real estate, they are not a real estate team under the Commission Bylaw. A real estate team requires more than one person who is licensed by the Commission to trade in real estate.

How do teams work under designated agency?

A team is always a team, not just when it is convenient to do so under designated agency. The Commission has noted a number of instances where industry members advertise their services as a team, market properties as a team, but then split up to represent a buyer and a seller as designated agents in a single transaction.

This is a problem, because a team operating under designated agency is the equivalent of a single designated agent. Under designated agency, the agency relationship is with the designated agent, not the brokerage and the designated agent is contractually obligated to keep their client information confidential from the other designated agents at the brokerage. The brokerage is responsible for acting in an even-handed, objective and impartial manner and ensuring the designated agents fulfill their requirements, including the requirement to keep client information confidential. This is the opposite of a common law brokerage, where all industry members at the brokerage are deemed to know all relevant information about brokerage clients. To act as a team under designated agency, all team members must be designated as agents on brokerage agreements. Otherwise, the sharing of client information that comes with being a team violates the brokerage agreements. If a team represents a buyer and a seller in a single transaction, they must do so through transaction brokerage or by treating one party as a customer.

This issue does not arise under common law because regardless of whether it is a team or two individual industry members from a common law brokerage, the trade can be conducted only through transaction brokerage or treating one party as a customer.

What do teams need to disclose?

Bylaw 702 Article 40

Before eliciting or as soon as practicable upon receiving confidential information from any person concerning that person's real estate needs, motivation, financial qualifications, or in any event before entering into a service agreement, an industry member must disclose (in writing) to that person:

- i) the nature of the services that the industry member will provide,
- ii) whether the industry member is acting in the trade or anticipated trade on behalf of any other person, in any capacity,
- iii) any conflict of interest that may exist,
- iv) if a member of a team, the names of all industry members on the team.**
- v) any other facts that may be likely to influence the person's decision.

When working with a buyer or seller, a team must disclose, in writing, the names of all team members. On an agreement of purchase and sale, the team member must record their own name and their team name in the Agency Relationships section on the Brokerage Representative line. This includes situations where the team is made up of an industry member and a licensed assistant. The licensed person who prepares the paperwork is the person whose name is recorded on the Brokerage Representative line.

What does the broker need to know and do about teams?

Bylaw 704

A broker or managing associate broker shall be responsible for ...

- h) approving team names, team logos, and maintaining a current written record of the brokerage's real estate teams and team members.**

Brokers must approve team names and team logos (if applicable). The broker must also maintain a written record of teams and team members. The record must state that the team members agree to work together as a team and must be signed

by each member of the team and the broker. The list must be made available when requested by the Commission.

What needs to be in team advertising?

NOTE: 708 a), b), and c), apply to all advertising, not just team advertising.

Bylaw 708

- a) Any advertisement or incentive or the offering of any incentive or the participation in an incentive program to the public in any medium as an inducement to trade in real estate undertaken or authorized by an industry member must not be
 - i) false;
 - ii) inaccurate;
 - iii) reasonably capable of misleading the recipient or intended recipient;
 - iv) in bad taste; offensive or harmful to the best interests of the public or harmful to the image of the real estate industry; or
 - v) prohibited by law.
- b) All industry member advertising must display the brokerage name in a prominent and easily readable manner.**
- c) No industry member may advertise in such a manner as to cause confusion between the brokerage name or logo and any other name or logo that appears in the advertisement.**
- d) The brokerage name or logo must be the same size or larger than the team name or team logo in team advertising.**

The teams task force conducted a review of team advertising. An issue that was identified in many advertisements was that the team name was so prominent and the brokerage name was so small, it looked like the team name was the brokerage name. This is misleading advertising. Consumers sign brokerage agreements with brokerages, not teams. When teams advertise, the brokerage name must be prominently displayed so there is no confusion between the team name and the brokerage name. To ensure there is no confusion, the brokerage name or brokerage logo must be the same size or larger than the team name or team logo in team advertising.

Examples of correct and incorrect team advertising can be found in the Commission Advertising Guidelines:

<http://nsrec.ns.ca/media/f4cb.pdf?mid=425>