

“Be Careful Out There!”

Triple Play 2022

What are the biggest issues for you?

What are the requirements for supervising brokers?

- ✓ Reasonable supervision
- ✓ Written office policy

What does it mean to be a supervising broker?

This is the broker in charge of an office, even if others in the office have a broker’s license.

General Responsibilities

- ✓ Supervise agents’ activities
- ✓ Oversee financials, including escrow (if the company has one)
- ✓ Provide training as required by MT law
- ✓ Ensure that all in the company follow all applicable federal, state and local laws
- ✓ Hire and train agents and support staff
- ✓ Create and/or review and amend, if necessary a Policy Manual.

How do you supervise, in a world where agents work from home, or the nearest coffee shop?

- ✓ Technology?
- ✓ Face-to-Face?
- ✓ Check ins?
- ✓ Check sheets?

Remember the adage: “People do what you check on.”

Sample Checklist:

Document	State Required	Company Required
Agency disclosure	X	X
Agency agreement (buyer agency) or listing agreement	X	X
Pre-Approval Letter (not needed for seller)		X
Fully executed Agreement of Sale	X	X
Copies of deposit checks		X
Estimated closing costs	Maybe*	Maybe*
Seller disclosure signed and acknowledged by buyer	X	X
Lead paint disclosure	X	X
Copy of home inspection	X	X

Reply to inspections	Maybe*	Maybe*
Any amendments to the AOS	X	X
Lender approval	X	X
Final walk-through form	X	X
Copy of Closing Disclosure	X	X
Copy of Seller ALTA	X	X
Home Warranty Disclosure		X
Other Company Products Disclosure		
Company checklist		X

This is not all-inclusive, but gets you started. Remember that the file should tell the story of the transaction, from beginning to end.

Company Financials:

According to NAR, approximately 80% of real estate brokerages are small (under 5 people). Brokers in these companies are generally responsible for financial monitoring, writing checks, getting information to the accountant, and making sure that the company is operating in a sound manner.

Escrow Funds: PA, NJ, NY require a broker to have an escrow account.

Deposit Funds Issues: An issue seen in many states is the buyer not making the earnest money deposit in a timely manner, often delaying this until the home inspection is done, which is almost never what the contract says. This raises the question of whether or not the seller can terminate the contract.

Training of Agents:

Training is an on-going process for all brokerages, at all times. Laws, regulations, forms, and the market change, causing us to need to train agents for the current environment.

To monitor transactions, you might use a checklist like this, where “S. Agent” is the seller agent, and “B. Agent” is the buyer agent.

Item	Date provided	Provided by	Comments
Required agency disclosure	1/3/2XXX	S. Agent	
Buyer agent agreement (non-exclusive)	1/3/2XXX	S. Agent	Buyer not willing to commit to exclusive agreement
Review of pre-qualification/pre-approval	1/3/2XXX	S. Agent	Buyer stated they have talked to Bricks & Mortar Bank

Review of in-house services: lender, title	1/3/2XXX	S. Agent	Buyer may use in house title
Disclaimer for services	1/3/2XXX	S. Agent	Explained to buyer they are not obligated to use any in-house services
Buyer counseling session	1/3/2XXX	S. Agent	Reviewed with buyer wants, needs, price range; reminded buyer agent cannot violate any Fair Housing Laws in answer to their questions about neighborhoods
Pre-approval letter	1/9/2XXX	Buyer provided to agent	
Buyer Agency Agreement (exclusive)	1/10/2XXX	S. Agent	Buyer ready to commit
Seller Property Disclosure for: (address)	1/11/2XXX	S. Agent	Reviewed with buyer, got initialed and signed
Sales contract	1/11/2XXX	S. Agent	Reviewed with buyer, initialed and signed
Wire Transfer notice	1/11/2XXX	BOTH agents have their clients review & sign	Notice that any email telling them wire transfer procedures have been changed is fraudulent, and to CALL the title company or the agent at the numbers they already have for them, not any phone numbers in the email
Initial earnest money deposit	1/11/2XXX	S. Agent	Photocopied check; gave to administrative assistant 1/11/2XXX for deposit
Balance of earnest money deposit	1/13/2XXX	Buyer provided, upon our receipt of signed contract	Photocopied check; gave to administrative assistant 1/13/2XXX for deposit
Home inspection ordered	1/3/2XXX	Ordered by buyer	To be complete on or before 1/14/2XXX
Title report ordered	1/4/2XXX	Ordered by buyer	Buyer using in-house title company

Deed ordered	1/4/2XXX	Seller agent orders on behalf of seller	Sends copy of AOS to attorney/title company
Reply to inspections	1/13/2XXX	S. Agent prepared	Per instructions from buyer
Reply to reply to inspections	1/15/2XXX	Listing agent prepared; S. Agent reviewed with buyer	Buyer agreed to reply from seller
Amendment to AOS	1/15/2XXX	S. Agent prepared, reviewed with buyer, got signed, gave to listing agent	Calls for price abatement in the amount of \$2500; all repairs requested by buyer to be completed by buyer
Appraisal inspection	1/16/2XXX	Per listing agent, appraiser did inspection	Notified buyer
Copy of lender approval	2/14/2XXX	Per buyer agent, it has been reviewed with buyer, and they can meet all the stipulations in the approval	
"Clear to Close" notification	2/18/2XXX	Lender/title company provide; both agents confirm with their respective clients that the date/time works	Time and place confirmed
Closing documents reviewed	2/19/2XXX	Buyer agent	Reviews costs with buyers, reminds them that they must wire transfer the funds, or bring a cashier's check to closing; reminds buyer to sign up for utilities
Closing documents reviewed	2/19/2XXX	Seller agent	Reviews costs with seller; verifies whether or not they are attending closing; if not, gets instructions for how final funds are to be dispersed (bring a check, wire transfer) Reminds seller that house should (generally) be vacant and broom-clean; seller

			should order final readings on utilities
Walk-through checklist	2/22/2XXX	Buyer agent accompanies buyers for final walk-through; checklist is filled out and signed	Any issues must be resolved (e.g. garbage left behind, items which should have been included are missing, etc.)
Closing documents	2/22/2XXX	Buyer agent gets copy of buyers closing statement for file	Reviews it with buyers; reminds them they will need this at tax time, and reminds them to change locks
Seller's ALTA	2/22/2XXX	Seller agent gets copy for file, delivers one to seller if they did not attend	Reminds sellers they'll need this at tax time; reminds them to cancel home owner's insurance

Topics for All Agents:

The Policy manual itself offers many opportunities for training agents. You can simply pick one section, or several particular topics, to cover at one time. Here's another list of suggested training topics for agents in general:

Regulatory Training Topics	Professional Development Training Topics
License Law	Negotiation
Fair Housing	Making a listing presentation
Seller property disclosure	Making a buyer presentation
Contracts and forms	Time management
Risk Reduction	Dealing with difficult people
Review of legislative issues	Business planning
Review of issues in the office	Marketing ideas

In groups, review the above list. Discuss which topics would be of most value to your agents.

Policy Manual: Everything you do as a broker should tie back to the Policy Manual. Let's review a list of things typically found in a policy manual.

1. Advertising policies
2. Agency Policy (does the company practice all types of agency allowed by law, or not?)
3. Alcohol, Drugs, and Our Workplace
4. Anti-trust
5. Business of the company (you don't want agents running a side business out of your office)
6. Commission policy, which is generally accompanied by a commission schedule. This should include the policy on referrals, including in-house referrals.
7. Confidentiality policy
8. Contact Relationship Management System (CRM)—big question, who owns it—the company or the agent? If the company owns it, does a departing agent have any access or rights?
9. Contract between broker and employee or sales associate
10. Coverage when unavailable (agents need to have a back-up person to cover)
11. Defining employees and sales associates
12. Deposit money and the law
13. Disclosures and the law
14. Do-Not-Call List
15. Education (company, and required CE)
16. Ethics, Ethical Complaints, Mediation, Arbitration
17. Expense Policy
18. Fees paid upon departure
19. Files and communications (files belong to the company! If there is an investigation after an agent leaves the company, and you don't have a file, you have a real problem)
20. Floor or opportunity time
21. Harassment and Sexual harassment
22. Independent Contractors Agreements (make certain your contract with those who are independent contractors meets IRS guidelines)
23. In-house agent disputes
24. Insurance, which would include E & O, extra liability for vehicles, person, if required.
25. Internet policy
26. Keys
27. Legal actions against sales associates and the company
28. Laws and regulations
29. Listing agreements (company can usually set rate, term, and broker owns listings)
30. Moral character
31. Multiple Listing Service
32. Non-Discrimination Policy
33. New Sales Associate/Personal Assistant Training
34. Offers: proper handling of offers and multiple offers
35. Office hours and holidays
36. Professionalism
37. Public image
38. Safety
39. Sales Agreements
40. Sales Associates (includes expectations)

41. Sales Meetings
42. Seller Disclosure Law, forms, revision of SPD after a defect is discovered
43. Showing Procedures, Lockboxes and Signs
44. Use of Office Space and Equipment
45. Wire Fraud

You will want to expand on these topics as suits your needs. An office policy manual is not done and shelved, you need to look at it at least annually, and make any changes. Also, if a circumstance comes up not covered in your policy, you want to think about adding it. As you can see, most topics will tie back to license law, other laws, the Code of Ethics, and general good business practices.

What's in Your Policy?

In your groups, discuss what we've covered. Come up with a list of things either missing from this list, or on this list, but they need to be added to your policy manual.

Advertising

Basics of advertising are in license law and the Code of Ethics, and include:

- No blind ads
- Brokerage name must be readily apparent
- Permission must have been obtained from the seller/lessor to advertise
- False or misleading advertising is prohibited
- Authority to advertise is in listing contract, upon sale or expiration of listing, broker no longer has authority to advertise, which includes signs
- Agents cannot advertise listing property without brokerage information as required
- Generally, if an agent is selling a property without using a brokerage, the ad must disclose their licensee status

Case Study Directions: Review the case studies in your groups, and identify if there is a violation of license law, the Code of Ethics, or both.

Case Study #1, Increase My Market Share: Joe, an up-and-coming real estate agent is trying hard to break into the Shady Hills Subdivision, where the houses are upscale. There's a lot of competition in that neighborhood from other established agents. Using MLS and courthouse data, Joe begins a farming campaign which includes a newsletter, available by email or snail mail. In the newsletter, Joe recites all the recent transactions in Shady Hills. The cost of postage is a concern, and Joe decides that instead of newsletters, he will send "Just Listed/Just Sold" postcards. He downloads the information from MLS, and sends it out, on the listing side, with text which says: "Just listed in Shady Hills—I can show you this house." He does not include the listing agent's information. On the sold side, he sends a "Just Sold" postcard, again downloading the information from MLS, and sends it out with text that says: "Houses are selling in your neighborhood! Call Joe if you want to sell!" Again, this does not contain any information about either the listing or seller broker.

Case Study #2, I'm Helping You Out! Marcy, a real estate agent is friends with several other licensees and is connected with them via social media, such as Facebook, Instagram, Twitter, etc. Marcy always

asks her friends if she can share their posts about new listings, and so far they have all said yes. But today, her friend Sally, at another company, sends Marcy a message: “You need to take down that post of mine you shared about the new listing I have in Upper Clarion. The sellers saw it and they are really mad!” Marcy messages back: “But you said I could, and I only need permission from you, not from the seller. Can’t you talk them into this?”

Case Study #3, OMG, Did You See This? Frank, an agent active in social media, has a habit of taking pictures of listings he shows, which are listed by other companies. He also has a sharp wit, and likes to post pictures with biting comments, such as “Look at this—living room by Liberace!”, or “If you miss the 70’s, we have a house for you!” Recently, the broker at his company received a complaint from another broker about Frank’s ‘unprofessional’ activity.

Case Study #4, “Free Market Analysis” Linus, a licensee, ran a campaign which mailed coupons to property owners. The coupon stated “This entitles you to a Free Market Analysis of the value of your property, with no obligation. However, Suzie Homeowner found that when she called Linus and he came out to do the market analysis, he stated: “I presume you understand that when we provide this service, we expect that if you list, you will list with us.” Following this, for the next 3 weeks, either Linus or someone from his office called “almost daily” to ask if Suzie was ready to list her home. Okay or not?

Case Study #5, “We’re a Team!” Mary and Perry form a real estate team within their company, ABC Brokerage. They name their team “Mary and Perry Sell!” They run a Facebook and Instagram ad, showing their newest listing. The end of the ad reads: “Contact the Mary and Perry Sell! Team now! You can message us from this site, or call us on either of our cell phones, 123-456-7890 or 123-456-7891.” Neither the brokerage, the name of the brokerage, or any contact information for the brokerage is provided.

Other Laws, Regulations:

Fair Housing

Class poll: how many have viewed the Newsday story (a TV show) on racial discrimination on Long Island, NY?

Fair housing is covered *all the time*, yet agents still can’t seem to resist not following *Fair Housing Guidelines!*

Fair Housing Act: (race, color, national origin, religion, sex (including gender, gender identity, sexual orientation, and sexual harassment), familial status, disability)

REALTOR® Code of Ethics, Article 10: Article 10 REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Amended 1/14) REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color,

religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Amended 1/14)

Implicit Bias: *noun*: bias that results from the tendency to process information based on unconscious associations and feelings, even when these are contrary to one's conscious or declared beliefs.

RESPA General Rules: 1. You can't receive any sort of kickback from a settlement provider. This includes title companies, mortgage brokers or other service providers. No "thing of value" that is not a payment for a direct service actually provided.

2. You have to disclose any sort of affiliated business relationship before you make a referral. Is it an in-house lender? Or is the lender, or title agent, your spouse? Also, clients must know they are not required to use that referred provider's services.

Advice from NAR:

Examples of Permissible Activities and Payments

- A title agent provides a food tray for an open house, posts a sign in a prominent location indicating that the event was sponsored by the title agent, and distributes brochures about its services.
- A mortgage lender sponsors an educational lunch for real estate agents where employees of the lender are invited to speak. If, however, the mortgage lender subsidizes the costs of continuing legal education credits, this activity may be seen as defraying costs the agent would otherwise incur, and may be characterized as an unallowable referral fee.
- A title company hosts an event that various individuals, including real estate agents, will attend and posts a sign identifying the title company's contribution to the event in a prominent location for all attending to see and distributes brochures regarding the title company's services.
- A hazard insurance company provides notepads, pens, or other office materials reflecting the hazard insurance company's name.
- A mortgage brokerage sponsors the hole-in-one contest at a golf tournament and prominently displays a sign reflecting the brokerage's name and involvement in the tournament.
- A real estate agent and mortgage broker jointly advertise their services in a real estate magazine, provided that each individual pays a share of the costs in proportion with his or her prominence in the advertisement.

- A lender pays a real estate agent fair market value to rent a desk, copy machine, and phone line in the real estate agent's office for a loan officer to prequalify applicants.
- A title agent pays for dinner for a real estate agent during which business is discussed, provided that such dinners are not a regular or expected occurrence.

5. Examples of Prohibited Activities and Payments

- A title company hosts a monthly dinner and reception for real estate agents.
- A mortgage broker pays for a lock-box without including any information identifying the mortgage broker on the lock-box.
- A mortgage lender provides lunch at an open house, but does not distribute brochures or display any marketing materials.
- A hazard insurance company hosts a "happy hour" and dinner outing for real estate agents.
- A home inspector pays for a real estate agent to go to dinner, but does not attend the dinner.
- A title company makes a lump-sum payment toward a function hosted by the real estate agent, but does not provide advertising materials or make a presentation at the function.
- A mortgage broker buys tickets to a sporting event for a real estate agent, or pays for the real estate agent to play a round of golf.
- A title company sponsors a "get away" in a tropical location, during which only an hour or two is dedicated to education and the remainder of the event is directed toward recreation.
- A mortgage lender only pays a real estate agent for taking the loan application and collecting credit documents if the activity results in a loan.

Dodd-Frank Dodd-Frank covers a lot of ground. High point for agents is the requirement for their buyers to receive closing documents in advance of settlement. Also note that Dodd-Frank prohibits anyone trying to coerce or influence an appraiser.

Seller Disclosure:

Quick reminder: we had fraud laws before Seller Property Disclosure. We still have them. That means that even a person or entity who might be exempt from a Seller Property Disclosure Law is not exempt from disclosing a **known material defect**. Also, the SPD should be amended if an issue is discovered.

Hiring Agents

We know many agents want to enter the business, and many agents want to switch companies. This is not an easy job, and it isn't suited to everyone. Have you considered the following:

- ✓ Aptitude or personality testing to determine potential success
- ✓ Background checks
- ✓ Social media stalking
- ✓ Checking on currently licensed individuals, to see if there have been complaints filed against them
- ✓ Other?

Wrap-up and Q & A:

What did you learn?

What do you plan to implement?