

ARELLO Law & Regulation Subcommittee Report on Teams

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Below is a summary of the survey the ARELLO License and Regulation Committee Subcommittee on Teams conducted earlier this year. Twenty-four jurisdictions responded. In addition to the survey information, additional research from recent ARELLO listserv questions on teams and team advertising was used in the preparation of this report. A number of jurisdictions do not regulate teams specifically but feel they are adequately regulated by existing laws and rules on supervision and advertising.

Jurisdictions listed in the report are cited as examples that have a particular policy, but such citations are not intended to be a comprehensive list of all jurisdictions that have such policies. It should also be noted that a number of jurisdictions reported that they had current proposals for team regulations on the table; these were reviewed, but not included in the sample of jurisdictions listed.

This report and all survey responses will be available on the Law & Regulation Section page of the ARELLO website. The first question identified the jurisdiction. The rest are broken up into four parts.

Part 1: Identification of teams/team names

Q2: How does your jurisdiction define a team?

Roughly, half of the jurisdictions included in this review have a definition of team. A few more are contemplating or have proposed rules that define a team. Typical elements of the definition of team are more than one licensee working together and representing to the public that they perform real estate activities under a collective name or under one broker. **California** defines a team as a “professional entity or brand name used by a salesperson, and one or more other real estate licensees, for the provision of real estate services.”

Q3: Does Your Jurisdiction Restrict the Wording Used in Team Names?

A number of jurisdictions, roughly 13, place restrictions on the wording of the team name. Those restrictions are addressed later in this report but are summarized here also for ease of reference.

a. Independent Brokerage. Many jurisdictions prohibit words that imply that the team is an independent company or brokerage (**Kansas, Minnesota, and South Carolina**)

b. *Required/Permitted Words.* A number of jurisdictions require or allow “team” or “group” to be used in the team name (**Minnesota, Nebraska, and Nova Scotia**). **Oregon** requires the inclusion of the word “team” or the word “Group”. **California** requires the inclusion of the word “group”, “team”, or “Associates”.

c. *Prohibited Words.* A number, but certainly not all, prohibit the use of words indicating a team is an independent company or brokerage, such as “Company”, “LLC”, “Inc.” (**Colorado, Louisiana, Nebraska, Tennessee, Washington**), and “broker” (**California, Nebraska**). Some states also prohibit the use of the words “realty” and “real estate” (**Colorado, Louisiana, Ohio, South Carolina, Tennessee, and Washington**). The state of **New York** permits the use of the word “Team”, but prohibits the use of the words “Associate”, “Realty”, or “Group”. **Tennessee** prohibits the use of the word “Associates”.

Q4: Does your jurisdiction require registration of team names with the Regulator?

Most jurisdictions do not require the team name to be registered with the regulatory agency; however, there are some that do (**Hawaii, Illinois, Newfoundland and Labrador**). **Connecticut** requires all legal entities engaged in real estate, including team partnerships, to be licensed.

Q5: If team names are considered dbas in your jurisdiction, who “owns” the team name and who has to register it, the team lead or the responsible broker?

Only a few jurisdictions speak to the ownership and registration of dbas. Those that do specify that the broker register the dbas. **Texas** requires the broker to register team names. **Nebraska** and **North Carolina** permit the team lead to register the name. In **Washington**, a firm can have as many assumed names as they want. The assumed name must be registered with the Secretary of State. Assumed names are the property of the firm. If a firm is using the assumed name, then the designated broker must release it. **Missouri** offers an association license for teams operating under a franchise or parent company. The association must have a designated broker to manage the association company, which may be the designated broker of the association/parent company, someone from the team that has a broker qualified license, or some broker qualified person not associated with either the franchise/parent company nor the team. The team name, which is usually the association name, is registered as a fictitious name by the franchise/parent company, which becomes the owner of the fictitious team name. The designated broker for the association has all responsibility and decision-making authority for the association company and, therefore, can close the association (using fictitious team name in company) at any time without team owner authorization.

Q6: Does your jurisdiction require registration of the names of the members on a team with the regulator?

Few jurisdictions require the registration of team members. Exceptions are **Louisiana, Newfoundland and Labrador, North Carolina, and Rhode Island.**

Q7: Does your jurisdiction require the responsible broker to maintain records of members of a team and/or team names? If so, does the regulator have access to those records?

Most jurisdictions have no special rules regarding the retention of records specifically related to team members and/or team names. Rather, they apply their existing broker responsibility rules to teams and team record retention.

Part 2: Supervision and Compensation of Teams

Q8: Does your jurisdiction require some level of oversight of a team by the broker?

Nearly all jurisdictions stated that the designated or supervising broker of a brokerage is responsible for team member oversight and supervision in the same manner as for all other licensed brokers and salespersons affiliated with that brokerage. Even in those jurisdictions where teams are expressly recognized in applicable regulatory law, teams remain subject to the direct supervision of the employing broker. *See, e.g., South Carolina Code of Laws* ¶ 40-57-360 (A) (“The broker-in-charge must be responsible for supervising the team and all licensed members of the team. The broker-in-charge may not delegate supervisory responsibilities to the team members or team leader. Written office policy of the broker-in-charge shall address team relationships in which associated licensees may engage.”).

Q9: Are there any activities/duties that a broker may vest in a team lead?

In the majority of jurisdictions, a supervising broker may not delegate any activities or duties to a team or team leader. In **Colorado, Ohio, and Texas**, an employing broker may delegate in writing supervisory and other compliance authority to a qualifying team leader. In **Newfoundland and Labrador**, the employing broker may delegate authority to a team. In **North Carolina**, team management can be delegated to a team leader. Despite the authority to delegate authority to team members, the employing broker retains ultimate responsibility for overseeing the activities of all team members in each of these jurisdictions.

Q10: Who is responsible for supervision of unlicensed assistants on a team?

In the majority of jurisdictions, the designated or supervising broker is ultimately responsible for supervising unlicensed team assistants. In **Iowa**, an affiliated licensee may directly employ an unlicensed assistant. Both the designated broker in charge and the affiliated licensee share supervisory responsibilities over such an unlicensed assistant in Iowa with the affiliated licensee

having primary responsibility. In **Maryland**, the supervisory duties over unlicensed assistants fall first upon the team leader, followed by manager, and then broker. In **Texas**, the team leader is generally responsible for the actions of an unlicensed assistant, but a broker may also be held responsible.

Q11: Who can pay commission to team members (licensed and unlicensed)?

In the vast majority of jurisdictions, commission may only be paid to a licensed team member through the designated or supervising broker. In some jurisdictions like **Maryland**, a commission may be paid to a corporation formed by a team or individual team members. Unlicensed team members are generally prohibited from receiving sales commissions, but may be paid a regular wage or salary by either the brokerage or the team leader.

Q12: How does your jurisdiction address dual agency within a single team?

In the vast majority of jurisdictions, applicable dual agency rules are the same for teams as they are for other individual affiliated brokers and salespersons of a real estate brokerage. **Iowa**, **Michigan**, and **Nebraska** allow for appointed or designated agency within a single real estate brokerage to provide buyer and sellers each with independent representation. **South Carolina** prohibits members of the same team from acting as designated agents in a single transaction; they may only act as disclosed dual agents.

Part 3: Advertising

Q13: Does your jurisdiction have advertising rules that: (check all that apply)

Restrict use of sales agent's name in team name?

Restrict use of certain terms in team name?

Require that the broker's name and/or license ID number also appear in the advertisement?

Require a certain size or prominence for the broker's name?

Prohibit advertising by a team that misleads the consumer into thinking the team is the broker?

Given the nature of this question and the importance of this topic to regulators, this part is presented in a general summary format with specific examples of some jurisdictions' regulations included. As stated earlier, jurisdictions listed in the summary are cited as examples that have a particular policy, but such citations are not intended to be a comprehensive list of all jurisdictions that have such policies.

Broker Prominence in Team Advertising

The name the supervising broker does business under being prominently displayed in all team advertising is a common theme among jurisdictions that regulate teams, jurisdictions which have such a requirement include **Nebraska, Nova Scotia, Ohio, and South Carolina**. There are a number of different methods of further defining broker prominence and in team advertising as well as prominence in advertising in general.

- a. Further Descriptive Words**—The broker name must be “conspicuous, discernible and easily identifiable by the public” (**Louisiana**). **Washington State’s** definition specifically addresses multimedia advertising as well. “Clear and conspicuous’ in an advertising statement means the representation or term being used is of such a color, contrast, size, or audibility, and presented in a manner so as to be readily noticed and understood.”
- b. Proportional**—Broker name or the font of broker name must be some percentage of the team name or the next largest font used in the advertising.
- c. Footprint**—Broker name, if placed over the team name, must have an equal or larger footprint or size (**Nova Scotia**).
- d. Proximity**--Team name must be adjacent to and only used in conjunction with the broker name. (**Maryland, Nebraska**)

2. Team Names in Advertising

- a. Can’t Imply the Team is an Independent Company or Brokerage**—many jurisdictions have this requirement (**South Carolina, Kansas**)
- b. Required Words**--A number of jurisdictions require or allow “team or “group” to be used in the team name (**Nova Scotia, Nebraska**)
- c. Prohibited Words**--A number, but certainly not all, prohibit the use of words indicating a team is an independent company or brokerage, such as “company”, “llc”, and “inc.” (**Colorado, Nebraska**), “broker” (**California, Nebraska**). A number of states also prohibit the use of the words “realty” “real estate” (**South Carolina, Ohio**)
- d. Registration of Names**—Most jurisdictions do not require the team name to be registered with the regulatory agency, however there are some that do (**Newfoundland and Labrador**)

3. Broker Approval

A number of jurisdictions specifically provide that all team advertising be done under the supervision and or approval of the supervising broker. (**Louisiana, Nebraska, Maine, Ohio, Texas**)

4. Selected Laws Relating to Teams and Team Advertising

Colorado:

Rule E. Separate Accounts – Records – Accountings - Investigations

E-8. Advertising

Teams

1. Brokers who form a team shall not advertise in a manner that misleads the public as to the identity of the team's brokerage firm. Teams are prohibited from using the following terms in the team's name:

- (i) Realty,
- (ii) Real estate,
- (iii) Realtors,
- (iv) Company,
- (v) Corporation,
- (vi) CORP.,
- (vii) INC.,
- (viii) LLC,
- (ix) LP or LLP
- (x) Or any other term that would imply a separate entity from the brokerage firm with which the team brokers are licensed.

Louisiana:

Chapter 19, Real Estate Teams and Groups

§1905. Team or Group Names

A. Team or group names shall not contain terms that could lead the public to believe that the team or group is offering real estate brokerage services independent of the sponsoring broker. These terms shall include, but are not limited to:

- 1. real estate;
- 2. brokerage or real estate brokerage;

3. realty;
4. company.

§1907. Team or Group Leaders

- A. The sponsoring broker shall be responsible for all license activity of team or group members sponsored by the broker.
- B. The designated contact member of each team or group shall maintain a current list of all team or group members, which shall be provided to the sponsoring broker upon formation of the team or group and immediately upon any change thereafter.
- C. A current record of all team or group names, and the members thereof, shall be maintained by the sponsoring broker in a manner that can be made readily available to the LREC upon request, including record inspections.

§1909. Team Advertising

- A. A team or group name shall not be used in advertising without the written approval of the sponsoring broker.
- B. The term "team" or "group" may be used to advertise real estate license activities provided that:
 1. the use of the term does not constitute the unlawful use of a trade name and is not deceptively similar to a name under which any other person or entity is lawfully doing business;
 2. the team or group is composed of more than one licensee;
 3. the advertising complies with all other applicable provisions of this Chapter and LAC 46:LXVII.Chapter 25 of these rules and regulations.
- C. An unlicensed person shall not be named, acknowledged, referred to, or otherwise included in any team or group advertising.

Chapter 25. Advertising; Disclosures; Representations

§2501. Disclosures and Representations

- A. Agreements between brokers to allow property data to be shared and disseminated to clients, customers, or prospective clients, including but not limited to web-based or

email multiple listing service property data, IDX or VOW property data does not constitute advertising or advertisement as to the property data shared.

B. All advertising for property listed by or services performed by a licensed individual real estate broker or a licensed corporation, limited liability company, or partnership, and any advertising for property listed by or services performed by a licensed individual real estate broker or a licensed corporation, limited liability company, or partnership by sponsored licensees or employees, shall be under the direct supervision of and approved by the licensed individual real estate broker or designated qualifying broker of the licensed corporation, limited liability company, or partnership.

C. Any trade name used by a licensee, registrant or certificate holder in advertising shall be a trade name that is a clearly identifiable entity that will distinguish itself from other licensees, registrants or certificate holders.

D. All advertising by a licensed salesperson, associate broker, individual real estate broker, or licensed corporation, limited liability company, or partnership shall include their business name, which for the purpose of these rules shall mean the name in which that salesperson, associate broker, individual real estate broker, or licensed corporation, limited liability company, or partnership is on record with the commission as doing business as a licensee of the commission or, in the case of a trade name, that which is registered with the Secretary of State and on record with the commission.

E. A group or team name may be used in an advertisement only with the approval of the sponsoring broker. Any person listed as a group or team member in the advertisement must be a licensee sponsored by the sponsoring broker.

F. In all advertising, the salesperson or associate broker must include the name and telephone number of the sponsoring broker. The broker's name and telephone number must be conspicuous, discernible and easily identifiable by the public.

G. If allowed by the sponsoring broker, the salesperson or associate broker may include in the advertisement:

1. The salesperson's or associate broker's personal logo or insignia, which cannot be construed as that of a company name, and which must include the name and telephone number of the sponsoring broker;
2. The salesperson's or associate broker's contact information;
3. a group or team name, as long as the advertising complies with all other applicable provisions of this Chapter and LAC 46:LXVII.Chapter 19 of these rules and regulations; and

4. a slogan that may not be construed as that of a company name.

Maine

4-A. Advertising by Real Estate Brokerage Agencies

Real estate brokerage advertisements must contain the trade name as licensed by the Commission of the real estate brokerage agency that placed the advertisement. The trade name of the agency must be prominently displayed or presented. In an advertisement that appears on or is sent via the Internet, the trade name of the agency that placed the advertisement must prominently appear or be readily accessible.

In addition, the designated broker may authorize an advertisement that includes the name, telephone number, slogan, logotype or photo of an affiliated licensee or group or team of affiliated licensees as part of the brokerage services being offered by the real estate brokerage agency. The affiliated licensee or group or team of affiliated licensees may not independently engage in real estate brokerage.

Nebraska

Title 299 Chapter 2

003 Advertising shall include all forms of identification, representation, promotion, and solicitation disseminated in any manner and by any means of communication to the public for any purpose related to licensed real estate activity. All advertising shall be under the direct supervision of the broker, and prominently display the name the broker is conducting business as recorded with the Commission in a way that is conspicuous, discernible, and easily identifiable by the public. Advertising which is contrary to Sections 003 to 006 of these regulations shall constitute misleading or inaccurate advertising under Section 81-885.24(2) of the Nebraska Real Estate License Act.

003.07 Real estate affiliate and team advertising:

003.07a Team advertising shall always include the team name as recorded with the team's designated broker.

003.07b Team advertising shall prominently display the name which the broker supervising the team conducts business under as recorded with the Commission adjacent to the team name and similar or greater in size and visibility than the team name.

003.07c Advertising featuring the name of an affiliated associate broker or salesperson shall prominently display the name which the broker supervising the affiliated salesperson or associate broker conducts business under as recorded with the Commission

adjacent to affiliated licensee's name and similar or greater in size and visibility than the affiliated licensee's name.

003.08 Real estate team names:

003.08a Must always include the word "team" or "group" as part of the team name.

003.08b Real estate team names shall not include the words:

- (i) Realtors,
- (ii) Company,
- (iii) Corporation,
- (iv) Corp.,
- (v) Inc.,
- (vi) LLC,
- (vii) Inc.,
- (viii) LP or LLP,
- (ix) LP or LLP,
- (x) or similar words suggesting the team is a separate real estate brokerage or company.

003.08c Real estate team names may include the words "real estate" or "realty" on if such terms are immediately followed by the word "team" or "group"

Oregon:

OAR 863-015-0125(11)

(11) A licensee may use the term "team" or "group" to advertise if:

(a) The use of the term does not constitute the unlawful use of a trade name and is not deceptively similar to a name under which any other person is lawfully doing business;

(b) The team or group includes at least one real estate licensee;

(c) The licensee members of the team or group are associated with the same principal broker or property manager;

(d) The licensee members of the team or group use each licensee's licensed name as required under section (3) of this rule;

(e) If any non-licensed individuals are named in the advertising, the advertising must clearly state which individuals are real estate licensees and which ones are not; and

(f) The advertising complies with all other applicable provisions of ORS chapter 696 and its implementing rules.

South Carolina:

S.C. Code 40-57-360

- (A) The broker-in-charge must be responsible for supervising the team and all licensed members of the team. The broker-in-charge may not delegate supervisory responsibilities to the team members or team leader. Written office policy of the broker-in-charge shall address team relationships in which associated licensees may engage.
- (B) The team may act as disclosed dual agents only and with the prior informed and written consent of all parties and as addressed in the broker-in-charge's written office policy.
- (C) Team members must conduct all real estate brokerage activities from their commission-established office under the supervision of a broker-in-charge.
- (D) Team advertising must contain the team name and the full name of the real estate brokerage firm displayed in a conspicuous way.
- (E) No team may imply that the team is a separate entity from the brokerage firm of its employment. Team names may not include the terms 'realty,' 'real estate', 'realtors', or similar terms suggesting a brokerage.
- (F) The team, and any and all team members, must display and promote that they are directly connected to the brokerage firm under which the team works. The brokerage firm name under which the team works is to be displayed prominently and visibly in a meaningful and conspicuous way on all methods of advertising.
- (G) The commission may promulgate regulations regarding the creation and operation of real estate teams.

Washington State:

“(1) "Advertising" means any attempt by publication or broadcast, whether oral, written, or otherwise, to induce a person to use the services of a real estate firm, broker, managing broker, or designated broker. & (4) **"Clear and conspicuous" in an advertising statement means the representation or term being used is of such a color, contrast, size, or audibility, and presented in a manner so as to be readily noticed and understood.**”

“(8) Advertising in any manner without including the real estate firm's name or assumed name as licensed in a clear and conspicuous manner in the advertisement; except, that real estate brokers, managing brokers, or firms advertising their personally owned real property must only disclose that they hold a real estate license;”

Nova Scotia:

(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 any industry member name or team name or industry member logo or team logo in advertising.

Part 4: Qualification of Team Leads

Q14: Does your jurisdiction require some level of oversight of a team by the broker?

Most jurisdictions stated that the broker is responsible for team member oversight in the same manner as for all supervised license holders. One state specifically calls out team oversight.

South Carolina: Section 40-57-360. (A) The broker-in-charge must be responsible for supervising the team and all licensed members of the team. The broker-in-charge may not delegate supervisory responsibilities to the team members or team leader. Written office policy of the broker-in-charge shall address team relationships in which associated licensees may engage...(C) Team members must conduct all real estate brokerage activities from their commission-established office under the supervision of a broker-in-charge.

Q15: Does your jurisdiction have any education or experience requirements that a license holder must meet prior to becoming a team lead?

Only two states indicated that they have any prerequisites for becoming a team lead.

Maryland: To become a team lead, you must be an associate broker or a sales agent with at least 3 years of experience.

North Carolina: When a team is an entity, the team entity must have a broker- in-charge in addition to the broker-in-charge for the overarching brokerage firm.

Q16: Does your jurisdiction have any continuing education requirements for team leads beyond that required for all license holders?

Four states indicated some level of continuing education is required.

Maryland: Team lead must take a broker responsibility course every 2 years and within 90 days of becoming a team lead.

Nebraska: Team lead must take 3 hours of team related education within existing CE requirements.

North Carolina: If the team is a separate entity then broker-in-charge of team entity must take additional education annually.

Texas: If the broker designates the team lead as a “delegated supervisor” in TREC’s records, the team lead must take a broker responsibility course as part of existing CE requirements every two years.