

What the licensing law requires to operate as a real estate corporation or partnership

By: Joseph Autilio

When speaking of the licensure of real estate agents, many may not be aware that in addition to licensing individuals as real estate agents the licensing law also requires corporations and partnerships to become licensed brokers when they engage in real estate transactions under the relevant licensing law.

In the case of a corporation (whether a business or professional corporation) one of the officers in the corporation must be licensed individually as a real estate broker. The statute refers to this individual as the “responsible broker” and the Board commonly calls this person the “broker of record” for the corporation. With partnerships (both general and limited) one of the partners in the partnership must also be licensed as a broker before the partnership can become a partnership broker. The Board also refers to the partner as the “broker of record” for the partnership.

Once licensure is achieved this entitles the corporation or partnership to act as a real estate broker and perform all of the functions defined as brokering in General Laws of Massachusetts Chapter 112, Section 87PP. However, what is often misunderstood is that while the corporation or partnership holds a broker’s license it must still act through an agent of such business entity and any such agent must be a licensed real estate agent. In many cases, corporations and partnerships act through their broker of record when interests in real property are bought, sold or leased on behalf of purchasers and sellers. Additionally, corporations or partnerships may have other licensed real estate agents in their employ or as affiliates with the business entity and they too may act as agents for such business entities.

In some situations, the Board learns that either individual employees or affiliates of a corporate or partnership broker holding no license act as a real estate agent for such business entity. This is clearly not permissible under the relevant licensing law, for while the business entity may have been licensed as a broker that license does not entitle every individual employee or affiliate to act as a real estate agent for the corporation or partnership. Rather it only permits the broker of record and the other licensed real estate agents to perform the functions of a real estate agent as defined in the relevant licensing law. This is so given the licensure requirement in the relevant licensing law.

Whether an individual broker should incorporate or form a partnership may involve a variety of factors that the Board is neither competent to address nor the appropriate party. To decide. Individual brokers having questions on this should seek the advice of professionals, particularly legal and tax experts. What the Board can address is the licensing law aspects of corporate and partnership licensure as a broker.

For now the Board wishes to take this opportunity to remind those seeking corporate or partnership licensure as brokers and those already licensed as such that only individually licensed real estate agents may engage in the practice of a real estate agent as defined by the relevant licensing law. Corporate or partnership licensure as a broker does not serve to authorize every individual employee of such business entity to practice as real estate agents.

The Board also seeks to remind the realty community that temporary licensure of corporations and partnerships as brokers is possible in those instances where the business entity loses their sole broker of record through death, disability or severance of ties with such entity. The temporary license is only good from one year following the date where such broker severs his/her ties with the business entity, dies or becomes disabled. Such licensure is dependent upon the business entity pursuing “due diligence” under the relevant licensing law as contained in General Laws of Massachusetts Chapter 112, Section 87UU. In the Board’s view due diligence is satisfied where the business entity has actually filed the appropriate

application with the Board for a temporary license. It also means that the business entity either finishes its business dealings during the temporary licensure period or obtains a new broker of record for the entity. Temporary licensure is not a means to transact business as a corporate or partnership broker indefinitely, but, rather, a device to complete such dealings or bring the business entity back into full licensure with a new broker of record.

Having said this it should be noted that, naturally, those brokers who operate as sole proprietors need not become corporations or partnership brokers, unless they do so based upon professional advice, hold themselves out as corporations or partnerships or otherwise wish to obtain such licensure.

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