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REAL ESTATE COMMISSION

Idaho Code Section 54-2038 requires designated brokers to:

“Supervise and control...the activities of all licensed and unlicensed persons associated with that brokerage company...”

“...Review and approve all real estate agreements including, but not limited to, those related to listing, selling, or purchasing property and brokerage representation agreements...”

According to this language the designated broker is required to review all real estate related documents. In many of the Commission’s investigations and audits, it is apparent that many brokers are not reviewing documents until after closing. Since the broker has the duty to supervise and control his licensees, he is obligated to review the agreements in time to prevent potential problems from occurring. When documents are reviewed after the fact, no supervision or control is possible.

The current market involves an abundance of short sale transactions. We have seen quite a few licensees selling their own property with a short mortgage payoff. In this situation the terms of the sale typically do not allow the seller/licensee to take anything away from the transaction. This includes sales commissions, negotiation fees, referral fees, transaction fees, or any other creative way of generating money from the transaction. However, in many cases the transaction documents clearly reveal monies going to the seller/licensee, in violation of the terms of the short sale agreement. If the designated broker had timely reviewed the transaction documents, he could have prevented a violation from occurring. Failure to control the licensee is a License Law violation on the broker’s part.

According to Idaho Code Section 54-2055(3), all licensees are required to conduct their personal transactions through the brokerage that they are licensed with. This law was not put in place to ensure captive income to the brokerage. It was put in place to provide for supervision by the designated broker. Designated brokers are responsible, and may be liable, for the actions of their licensees. Because designated brokers must be given the opportunity to supervise, licensees are required to conduct personal deals through their brokerage.

Designated brokers should pay particular attention to the personal transactions of licensees. A licensee will have more control as a principal than he would in a normal brokerage transaction. As a principal, he can issue instructions to the title company, obtain a new mortgage himself, or perhaps negotiate a short payoff of his own mortgage.

Idaho Code Section 54-2048 (1) places an additional duty on the broker responsible for the transaction. The responsible broker is required to:

“...Ensure the correctness and delivery of detailed closing statements which accurately reflect all receipts and disbursements for their respective accounts to both the buyer and seller in a transaction, even if the closing is completed by a real estate escrow closing agent, title company or other authorized third party and regardless of the responsible broker’s agent or nonagent relationship to the buyer or seller...”

From this language, it is clear that the responsible broker must review the closing statements prior to closing. Finding an error after the loan has funded, and the reconveyance and deeds are recorded, does not satisfy the letter of the law. The responsible broker must *ensure the correctness* of the closing statements, not identify errors after it is too late.

The Commission is seeing short sale transactions right now in which licensees are attempting to separately sell parts of the home as personal property, in order to generate cash for the seller. These “personal property” items tend to include furnaces, hot water heaters, light fixtures, sinks, and living trees. The real estate agreements are made contingent upon the buyer paying extra to purchase these additional, so called “personal” items. However, a designated broker would know these items are fixtures that should be included in the real estate transaction, and that the licensee is improperly attempting to get around the terms of the short sale agreement. And, even if the items were properly separated from the real estate transfer, the fact that the deal was contingent on the side agreement requires the side agreement to be reflected in the closing statements – otherwise it’s a prohibited double contract.

As a designated broker you can be disciplined for failure to supervise and control your licensees, failure to review the transaction documents, and failure to ensure the correctness of closing statements. Take this obligation seriously, and remember that no one transaction, or one licensee, is worth the security of your own license or your entire brokerage.

Sincerely,

A handwritten signature in cursive script that reads "Jeanne Jackson-Heim".

Jeanne Jackson-Heim, Executive Director
Idaho Real Estate Commission