

Tighter rein on agents coming

Regulations in place
for more supervision
by company brokers

'It's a little tougher'

'Better training,
better education'

By ROBERT NUSGART
SUN REAL ESTATE EDITOR

After years of debate and discussions between Realtor trade associations and the Maryland Real Estate Commission, regulations are now in place for the enhanced supervision of real estate agents by company brokers.

"It's a little tightening up; it's a little tougher," said the commission's new chairman, Steven Van Grack of Rockville. "It is starting to prepare [agents] for better training, better education. There is nothing wrong with making it a little more stringent."

As supervisory roles began to increase among the state's larger brokers, the commission had long sought to improve accountability of those in charge of agents.

"Some of the arguments [among supervisors] to avoid responsibility were that ... 'I didn't know this. I didn't know that,'" Van Grack said.

"And the sales person [the agent] was saying, 'I didn't know I had to do this. I didn't know I had to do that.' And that became a pattern of behavior."

"The commission said, 'Wait a minute. The supervisory concept should be stronger. With the increasing number of people who are becoming supervisors ... let's put the burden on the person who is supervising.'"

At the core of the debate between the Maryland Association of Realtors (MAR) and the commission was whether requirements to attend train- [See Agents, 5c]

Agents facing tighter rein by brokers

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ing sessions would erode or violate the agent's status as an independent contractor and in effect make the agent an employee of the company.

In October 1989, the commission approved a proposed set of regulations that would have required agents to attend sales meetings, created additional paperwork for brokers in the form of manuals explaining guidelines and policies and shifted from the real estate commission to the broker the burden of proof that an agent had been adequately supervised.

The regulations weren't revisited until December 2000, when the MAR, along with representatives from the Anne Arundel Association of Realtors and the Greater Capital Area Association, debated the language in the proposed regulations.

"They made the argument, but there are so many other things that go on in terms of determining independent contractor vs. an employee, this is just a small little nugget of it," Van Crack said.

"We softened it some. But the basic tenets of what we proposed are there ... I also think that they were convinced after raising the issue that they would never lose that status [of independent contractor]. So that was a real big factor."

... What the MAR finally got was language in the regulation spelling out that "the exercise of reasonable and adequate supervision ... may not be construed or deemed to create an employer/employee relationship ... or to alter the status of an individual as an independent contractor."

The revised regulations were published in the *Maryland Register* April 20 and were approved by the commission in June.

"There was some [proposed earlier] language that would have required brokers to effectively force agents to attend some of these [sales] meetings, and under independent contractor law, the more control that the broker exercises over its agents, although it does not affect their tax status as an independent contractor, it does affect other issues," said Bill Castelli, legislative affairs director for MAR.

"The agreement that resolved it for us still gave the commission confidence that brokers are keeping track of the agents [who] are attending meetings and the updates that they are doing.

"They'll have confidence that they will know who is being properly supervised, and who they think could be supervised better. It was a solution that worked for us because it wouldn't have raised any of the legal questions of doing it the other way would have."

The regulations will require the availability to agents of training or education sessions held regularly at least once every two months. It also will require the availability of "experienced supervisory personnel" to review and discuss contract provisions, brokerage agreement provisions and advertising.

Where no written guidelines were required before, brokers must have on hand "written procedures and policies which provide clear guidance" to the following:

- Deposit monies.
- Compliance with federal, state and local fair housing laws and regulations.
- Advertisement requirements applicable to real estate transactions.
- Review of contracts, leases and brokerage agreements upon execution by all parties.
- Use and limitations of unlicensed personal assistants.
- Disclosure of agency relationships by licensees in residential real estate transactions.

"It will require some additional paperwork, although it does not require the kind of paperwork the original regulation would have required," Castelli said. "Specifically, it will require brokers across the state to have a pretty standard policy manual that their agents are going to be expected to follow."