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Department of Labor, Licensing and Regulation



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Licensees Working for the Same Brokerage, but Performing Services for Different BICs

The Commission has received an inquiry regarding whether licensees that work for the same brokerage, but different Brokers-In-Charge (BIC) may conduct an open house for a listing agent that is supervised by a different BIC.

S.C. Code §40-57-135(E) states, in part:

(1) A licensee may not **advertise, market**, or offer to conduct a real estate transaction involving real estate owned, in whole or in part, by another person **without first obtaining a written listing agreement between the property owner and the real estate brokerage firm with whom the licensee is associated...**

(emphasis added). Conducting an open house constitutes advertising and marketing for a real estate transaction. Further, several definitions in S.C. Code §40-57-30 state, essentially, that agency agreements are created between a client and the real estate brokerage firm (vs. a broker-in-charge, a.k.a. “BIC” or a supervised licensee). Some licensees may interpret these definitions as allowing the sharing of supervised licensees between BICs for purposes of conducting an open house. This Commission, however, advises that the sharing of supervised licensees between BICs for purposes of conducting an open house is not permitted for several reasons.

First, S.C. Code §40-57-30(7) defines a BIC as:

the sole broker designated by the commission to have responsibility over the actions of all supervised licensees.... **The authority granted to the broker-in-charge cannot be assigned or designated to another licensee.**

(emphasis added). Further, S.C. Code §40-57-30(39) defines a supervised licensee as:

a licensee affiliated with an **under the supervision of a broker-in-charge** or property manager-in-charge.

(emphasis added). Thus, a BIC cannot assign or designate supervision of a supervised licensee to any other licensee, including another BIC within the same brokerage, and a supervised licensee cannot be supervised by anyone other than their supervising BIC as designated by the Commission. Additionally, S.C. Code §§40-57-770 and 40-57-710(A)(6) and (B) are clear that a supervised licensee's BIC is responsible for the supervised licensee's behavior with regard to discipline under the Real Estate Practice Act and that a supervised licensee may **not** represent "a real estate broker other than the broker-in-charge or property manager-in-charge with whom they are licensed."

For clarity, even when the same individual serves as a BIC for more than one licensed brokerage firm, each brokerage firm is a separate legal entity. A supervised licensee affiliated with one brokerage firm may not perform any licensed real estate activity, including conducting an open house, for another brokerage firm, regardless of whether the same individual is the BIC for both firms.

Further, pursuant to S.C. Code §40-57-135(A), BICs are responsible for adequately supervising their licensees to ensure their compliance with the Real Estate Practice Act, the Interstate Land Sales Practices Act, the Vacation Time Sharing Plans Act, and Chapter 1 of Title 40, no matter what capacity under which their supervised licensees are operating. Because conducting an open house for another licensee supervised by a different BIC would mean the licensee is essentially practicing real estate under the supervision of another BIC, this behavior would implicitly violate S.C. Code §§40-57-135(A), 40-57-30(7), 40-57-30(39), 40-57-710(A)(6). Additional provisions of S.C. Code §40-57-135(A) regarding the use of forms, general supervision of licenses to ensure compliance with Chapter 57 of Title 40, being available to the public to discuss or resolve complaints involving supervised licensees, establishment and maintenance of office policy (which may differ from BIC to BIC even within the same brokerage), and ensuring all supervised licensees have an active real estate license all indicate that that sharing of supervised licensees for purposes of holding an open house would violate supervision requirements that must be met by BICs. Similarly, S.C. Code §40-57-330(B) requires that supervised licensees be licensed under a specific BIC and may not be licensed under more than one BIC at a time. S.C. Code §40-57-330(B) also requires supervised licensees that become disassociated with a BIC must immediately notify the Commission in writing and, if applicable, must provide the Commission with the information and authorization of the BIC that will supervise them going forward. Therefore, it is clear that supervised licensees are supervised by only one BIC at a time. For these reasons, it is legally improper to allow a supervised licensee to conduct an open house for another BIC.

Finally, supervised licensees may not receive compensation from any activity requiring a real estate license, including holding an open house, from any entity or person other than the one for which the license was issued, e.g., a supervised licensee may only receive compensation from **their** BIC for activities requiring a real estate license. S.C. Code §40-57-135(B). Because of this provision, if such an open house led to an offer and eventual closing, the supervised licensee that conducted the open house could not be compensated in any way by the non-supervising BIC without violating S.C. Code §40-57-135(B). Similarly, a supervised licensee could not be paid by a non-supervising BIC or real estate brokerage firm at a per-hour-rate or per-open house rate for holding an open house for their non-supervising BIC.

For the reasons set out above, the practice of allowing a supervised licensee to hold an open house for another licensee within the same brokerage, but not within the same BIC supervision, is not permissible under the Real Estate Practice Act.

Disclaimer: This guidance document is not intended as legal advice. The Commission is providing this guidance document to educate licensees on this area of the law with practical, everyday examples. This guidance document is only a high-level overview and may not take into consideration all the intricacies that may be present in a real-life event.