



LEGAL HOTLINE Q&A

FROM GET THE FACTS, November 3, 2020

QUESTION :

I wrote an offer on a home where there is a power of attorney. The daughter is trying to sell the home for her mom who is now in a nursing home. When writing up the purchase and sale documents, do you include the daughter's (POA) name as one of the sellers or just the mom's name (the legal owner)?

ANSWER:

The answer to this question must be determined based on broker's firm's policies. Washington law allows any person to sell their own home, including RE brokers. But there are additional issues to be considered when a FSBO seller is a licensed broker.

For example, broker and broker's firm must determine how to handle the processing of this transaction through the firm. To answer this question with respect to whether broker/seller can separate their provision of RE Brokerage Services from their relationship to the RE firm ... DOL is careful to explain that the broker will not trigger regulatory impacts for the firm if the broker engages personally so long as broker makes no reference to her RE firm during the transaction. (Broker must disclose that she holds a RE license.) Broker cannot meet buyers at the RE firm's office, use firm letterhead or forms branded with the firm's logo, business cards with the firm's name, email address with the firm's name, etc. So long as broker makes no reference to the RE firm in any dealings associated with the personal transaction, broker will not expose the firm to regulatory oversight. However, if broker slips up and references the RE firm in the transaction, the firm is fully accountable to the DOL whether broker informed the firm of the transaction or not.

Moreover, the firm remains accountable to consumers. Based on the License Law, a DB and firm are ultimately responsible for all RE Brokerage Services delivered by a broker licensed to the firm. Thus, if a consumer believes they are injured by a broker's delivery of RE Brokerage Services, the firm will be subject to the lawsuit even if the firm was never mentioned in the dealings with the consumer. The claim will likely include an allegation that the firm failed to provide required oversight.

Additionally, some E&O policies are voided if a party/broker represents him/herself in the transaction.

Because of all this, many firm's have office policies requiring brokers to run all transactions through the firm, regardless of whether broker is a party to the transaction. The firm may have an additional policy prohibiting a broker from representing him/herself. Moreover, the firm's E&O policy likely depends upon DB providing oversight so that any transaction where DB is intentionally excluded from oversight may void E&O coverage on that transaction. Broker/seller should confirm with DB whether broker may handle this transaction personally and whether broker should run the transaction through the firm.

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