

March 10, 2016

Via Email Only

Cathleen Quinn Nolan
Goldson Nolan Connolly PC
8 Claremont Court
Smithtown, NY 11787

Re: Real Property Law § 442

Dear Cathy:

Please accept the following in reply to your email of February 23, 2016. In your email, you requested an opinion regarding application of Section 442 of the New York Real Property Law. Specifically you have asked:

"[what is] the procedure for a broker's payment to a salesperson or associate broker's corporation rather than to the salesperson or associate broker individually? In addition, could you tell me whether said corporation can only be in the name of the salesperson or associate broker? Finally, must the salesperson or associate broker be the only shareholder in the corporation or can several salespersons and/or brokers have a corporation together when, for instance, they are working as a team?"

With respect to the procedure for payment, there is no difference in how the commission is paid, except that such funds are paid to the name of the entity as opposed to the salesperson or associate broker who earned the commission. As with all transactions, the commission must first be paid to the brokerage of record, and then the portion thereof belonging to the salesperson or associate broker can be released. I am unaware of any legal authority requiring that the corporation be "in the name of the salesperson or associate broker". Lastly, several salespeople or associate brokers may be shareholders or members of the entity, provided each such shareholder or member is duly associated with the broker of record that is providing the commission. Section 442(1) expressly provides: "it shall be permissible for a real estate broker to pay any part of a fee, commission, or other compensation received to an unlicensed corporation or an unlicensed limited liability company if each of its shareholders or members, respectively, is associated as an individual with the broker as a duly licensed associate broker or salesman." Real Property Law § 442 (emphasis added). The plain reading of this section supports that there be many (i.e., holders and members) of the entity receiving the commission, provided each such shareholder or member is associated with the paying brokerage.

I trust that you will have found the above information helpful.

Very truly yours,

/s/

David Mossberg
Associate Attorney



Department
of State