

Guidelines For Unlicensed Assistants*

Preamble

The designated officer of a corporation is explicitly responsible for the supervision and control of the activities conducted on behalf of a corporate broker by its officers and employees as necessary to secure full compliance with the Real Estate Law, including but not limited to the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required. It is inherent with respect to individuals engaging in business as a real estate broker that they are also similarly charged with the responsibility to supervise and control all activities performed by their employees and agents in their name during the course of a transaction for which a real estate license is required, whether or not the activities performed require a real estate license.

To assist brokers and designated broker/officers to properly carry out their duty to supervise and control activities conducted on their behalf during the course of a licensed transaction, it is important for the broker to know and identify those activities which do and do not require a real estate license. This knowledge assists the broker to use licensed persons when required, and to extend and provide the necessary quantum of supervision and control over licensed and nonlicensed activities as required by law and good business practices.

Identifying licensed activities has become difficult for many brokers as brokerage practices have changed and evolved in response to new laws, the need for new efficiencies in response to consumer demands, and new technology. The following is a guideline, and nothing more, of defined activities which generally do not come within the term "real estate broker," when performed with the broker's knowledge and consent. Broker knowledge and consent is a prerequisite to the performance of these unlicensed activities, since without these elements there can be no reasonable assurance that the activities performed will be limited as set forth below.

Cold Calling

Making telephone calls to canvass for interest in using the services of a real estate broker. Should the person answering the call indicate an interest in using the services of a broker, or if there is an interest in ascertaining the kind of services a broker can provide, the person answering shall be referred to a licensee, or an appointment may be scheduled to enable him or her to meet with a broker or an associate licensee** (licensee***). At no time may the caller attempt to induce the person being called to use a broker's services. The canvassing may only be used to develop general information about the interest of the person answering and may not be used, designed or structured for solicitation purposes with respect to a specific property, transaction or product. (The term "solicitation" as used herein should be given its broadest interpretation.)

Open House

With the principal's consent, assisting licensees at an open house intended for the public by placing signs, greeting the public, providing factual information from or handing out preprinted materials prepared by or reviewed and approved for use by the licensee, or arranging appointments with the licensee. During the holding of an open house, only a licensee may engage in the following: show or exhibit the property, discuss terms and conditions of a possible sale, discuss other features of the property, such as its location, neighborhood or schools, or engage in any other conduct which is used, designed or structured for solicitation purposes with respect to the property.

Comparative Market Analysis

Making, conducting or preparing a comparative market analysis subject to the approval of and for use by the licensee.

Communicating With the Public

Providing factual information to others from writings prepared by the licensee. A non-licensee may not communicate with the public in a manner which is used, designed or structured for solicitation purposes with respect to a specific property, transaction or product.

Arranging Appointments

Making or scheduling appointments for licensees to meet with a principal or party to the transaction. As directed by the licensee to whom the broker has delegated such authority, arranging for and ordering reports and services from a third party in connection with the transaction, or for the provision of services in connection with the transaction, such as a pest control inspection and report, a roof inspection and report, a title inspection and/or a preliminary report, an appraisal and report, a credit check and report, or repair or other work to be performed to the property as a part of the sale.

Access to Property

With the principal's consent, being present to let into the property a person who is either to inspect a portion or all of the property for the purpose of preparing a report or issuing a clearance, or who is to perform repair work or other work to the property in connection with the transaction. Information about the real property which is needed by the person making the inspection for the purpose of completing his or her report must be provided by the broker or associate licensee, unless it comes from a data sheet prepared by the broker, associate licensee or principal, and that fact is made clear to the person requesting the information.

Advertising

Preparing and designing advertising relating to the transaction for which the broker was employed, if the advertising is reviewed and approved by the broker or associate licensee prior to its publication.

Preparation of Documents

Preparing and completing documents and instruments under the supervision and direction of the licensee if the final documents or instruments will be or have been reviewed or approved by the licensee prior to the documents or instruments being presented, given or delivered to a principal or party to the transaction.

Delivery and Signing Documents

Mailing, delivering, picking up, or arranging the mailing, delivery, or picking up of documents or instruments related to the transaction, including obtaining signatures to the documents or instruments from principals, parties or service providers in connection with the transaction. Such activity shall not include a discussion of the content, relevance, importance or significance of the document, or instrument or any portion thereof, with a principal or party to the transaction.

Trust Funds

Accepting, accounting for or providing a receipt for trust funds received from a principal or a party to the transaction.

Communicating With Principals, etc.

Communicating with a principal, party or service provider in connection with a transaction about when reports or other information needed concerning any aspect of the transaction will be delivered, or when certain services will be performed or completed, or if the services have been completed.

Document Review

Reviewing, as instructed by the licensee, transaction documentation for completeness or compliance, providing the final determination as to completeness or compliance is made by the broker or associate licensee.

Reviewing transaction documentation for the purpose of making recommendations to the broker on a course of action with respect to the transaction.

* These "Guidelines," when strictly followed, will assist licensees and their employees to comply with the license requirements of the Real Estate Law. They present specific scenarios which allow brokers to organize their business practices in a manner that will contribute to compliance with the Real Estate Law. As such, they were drafted to serve the interests of both licensees and the public they serve. Nothing in them is intended to limit, add to or supersede any provision of law relating to the duties and obligations of real estate licensees, the consequences of violations of law or licensing requirements.

Licensees should take heed that because of the limiting nature of guidelines, as opposed to a statute or regulation, that they will not bind or obligate, nor are they intended to bind and obligate courts or others to follow or adhere to their provisions in civil proceedings or litigation involving conduct for which a real estate license may or may not be required.

Brokers and others who may refer to these "Guidelines" from time to time should be aware that it does not take very much to go from unlicensed to licensed activity. For example, it is a commonly held belief and understanding among licensees and others that participation in "negotiations" is somehow limited to the actual bargaining over terms and conditions of a sale or loan, when in fact the courts in this state have given much broader application to this term to include activity which may directly assist or aid in the negotiations or closing of a transaction.

** The term "associate licensee" means and refers to either a salesperson employed by the listing or selling broker in the transaction, or a broker who has entered into a written contract with a broker to act as the broker's agent in transactions requiring a real estate license.

*** Hereafter, the term "licensee" means "broker" or "associate licensee."