

Guidelines for the use of unlicensed persons by licensees

Licensees, both brokers and salespersons, often use unlicensed persons, either employed or contracted, to perform various tasks related to a real estate transaction which do not require a license. Such persons, for example, are used as personal assistants, clerical support staff, closing secretaries.

North Dakota Real Estate license law prohibits unlicensed persons from negotiating, listing, or selling real property, or in any other way acting as a broker or salesperson, or advertising or assuming to act as a broker or salesperson. Refer to NDCC §43-23-06.1(9) & (11) for a more complete list of functions that require a real estate license. It is, therefore, important for employing brokers and other licensees using such persons to carefully restrict the activities of persons to not violate license law.

Licensees should not share commission with unlicensed persons acting as assistants, clerical staff, closing secretaries, etc. The temptation for such unlicensed persons, in such situations, to go beyond what they can do and negotiate or take part in other prohibited activities is greatly increased when their compensation is based on the successful completion of the sale.

In order to provide guidance to licensees regarding which activities relating to a real estate transaction unlicensed persons can and cannot perform, the Commission has established the following guidelines:

Activities which **CAN** be performed by unlicensed persons who, for example, act as personal assistants, clerical support staff, and closing secretaries include:

1. Answer the phone and forward calls to licensees.
2. Transmit listing data and changes to a multiple listing service.
3. Follow up on loan commitments after a contract has been negotiated.
4. Assemble documents for closings.
5. Secure documents, such as public information, from courthouse, register of deeds, or tax office.
6. Have keys made for the firm's listings.
7. Record and deposit earnest money, security deposits, and other trust monies.
8. Type offers, contracts and leases under the direction of the licensee.
9. Check license renewal and personnel files for the brokers and salespersons with the firm.
10. Compute commission checks and act as bookkeeper for the firm's operating bank accounts.
11. Place and remove signs on property at the direction of a broker or salesperson with the firm.
12. Order and supervise routine and minor repairs as directed by the licensee or supervising broker.
13. Act as a courier to deliver or pick up documents, keys, and other items.
14. Schedule appointments.
15. Measure property if licensee verifies measurements.

16. Write and prepare ads, flyers and promotional information and place such advertising.
17. Hand out objective written information on a listing, other than at functions such as open houses, kiosks, and home show booths or fairs.

Activities which **CANNOT** be performed by unlicensed persons who, for example, act as personal assistants, clerical support staff, and closing secretaries, include:

1. Make solicitations by telephone or in person to potential listers and purchasers.
2. Show property.
3. Host open houses, kiosks, home show booths, or fairs or hand out materials at such functions.
4. Answer any questions on listings, title, financing, closing, and other real estate issues.
5. Discuss or explain listings, offers, contracts, or other similar matters with persons outside the firm.
6. Be paid on the basis of real estate activity, such as a percentage of commission, or any amount based on listings, sales, etc.
7. Negotiate or agree to any commission, commission split or referral fee on behalf of a licensee.
8. Act as a "go-between" with a seller and buyer such as when an offer is being negotiated.

Employing brokers, whether they are employing unlicensed persons or whether licensees under their supervision are using unlicensed persons as personal assistants or in other roles, are responsible for assuring that such unlicensed persons are not involved in activities which require a license. Brokers should establish guidelines for the use of unlicensed persons and procedures for monitoring their activities. It is the responsibility of the employing broker to assure that unlicensed persons, either employed or contracted by licensees under his/her supervision, are not acting improperly.

Reviewed by the North Dakota Real Estate Commission October 6, 2022.