

Broker's Guide: Unlicensed Assistants

The basics

The Virginia Real Estate Board (VREB) governs what is licensed vs. unlicensed activity. Assistants who do not have a real estate license hanging with the a supervising broker cannot perform "licensed activity."

Supervising brokers must provide adequate supervision over the unlicensed employees or assistants working at the firm.

If someone is licensed, but their license does not hang with your firm, any work they do for your firm should be treated as though they were an unlicensed assistant.

VREB has proposed regulations that are pending as of November 1, 2014. While these regulations are not yet effective, they provide good guidance on what VREB sees as acceptable activities for unlicensed assistants.

Licensed vs. Unlicensed Activity

- DPOR regulates what is licensed activity vs. unlicensed activity.
- Unless an individual has a real estate salesperson's or broker's license hanging with the supervising broker in a licensed firm, they are restricted to unlicensed activity on behalf of that firm.

Unlicensed Assistant Permitted Activities

- The broker has to consent to the activities being performed.
- Perform general clerical duties, including answering the phone or responding to email and providing information shown on the listing.
 - Providing information on the listing means factual data such as how many bedrooms or the list price.
 - Any question that starts with "Would the seller..." would not fall under this.
 - Example: Would the seller repaint? Would the seller accept an offer of \$__?
- Submit listings & changes to MLS (if allowed by the MLS rules)
- Follow up on loan commitments after contracts have been ratified
- Have keys made for listings
- Compute commission checks
- Place signs on properties
- Act as a courier service
- Schedule appointments
- Record and deposit earnest money deposits, security deposits, and advance rents
- Prepare contract forms for approval of the licensee and supervising broker
- Prepare promotional materials & advertisements for approval of the licensee & supervising broker
- Assemble closing documents
- Obtain required public information from governmental entities
- Monitor license & personnel files
- Order routine repairs as directed by licensee
- Perform any other activities undertaken in the regular course of business for which a license is not required

VREB has highlighted 5 things it views as licensed activities (and that unlicensed assistants **CANNOT** do):

1. Show property
2. Hold an open house
3. Answer questions on listings, title, financing, closings, contracts, brokerage agreements, and legal documents
4. Discuss, explain, interpret, or negotiate a contract, listing, lease agreement or property management agreement with anyone outside the firm
5. Negotiate or agree to any commission, commission split, management fee or referral fee

Paying Unlicensed Assistants

Unlicensed assistants must be paid at a predetermined rate that is not contingent upon the occurrence of a real estate transaction.

This means that unlicensed assistants must be paid a salary or an hourly rate - not a percentage of the agent's commission, an amount based on the number of transactions that close or any other structure tied to transactions.

Presentation Q & A

Questions

You have an open house scheduled on Sunday from 1-4. On your way to the store to get cookies for the open house, your car breaks down. You know you're not going to be able to make it to the house by 1 and your sellers have been difficult so far. Can you call your unlicensed assistant who lives right around the corner from the listing and ask her to walk over and just sit at the house until you can get there around 1:30?

Answers

No. The VREB has clearly said that holding a house open is an activity that requires a license. Even though it will only be for a few minutes, having your unlicensed assistant sit there will violate the regulations.

Questions

Your unlicensed assistant is screening your calls for you while you are in a meeting. A call comes in from someone who has a few questions. Which of these can your unlicensed assistant answer if you give consent in advance?

1. What is the list price of the home?
2. What school district is it in?
3. Can we move into the property before settlement?

Answers

Questions 1 (list price) & 2 (school district) are fine, but your unlicensed assistant should not answer whether the seller would be willing to accept certain addenda or contingencies as part of a contract.

Questions

True or false: Because I'm not sure how much I'm actually going to need an unlicensed assistant, I can just pay him for each transaction he works on that settles.

Answers

False. unlicensed assistants can only be paid for their work at a predetermined rate that is not contingent upon the occurrence of a real estate transaction.