

MAR Legal Issue Summary

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PERSONAL ASSISTANTS

Overview: A growing trend in the real estate community is the use of real estate assistants, commonly referred to as "personal assistants". These assistants, licensed or unlicensed, provide numerous administrative duties for brokers and salesmen. Massachusetts licensing laws and regulations limit what functions unlicensed individuals may perform in real estate transactions. Licensed real estate brokers and salesmen should use caution when using personal assistants.

Relevant Law: M.G.L. Chapter 112, sections 87PP and 87DDD.
254 CMR 2.00 (Board of Registration of Real Estate Brokers and Salesmen Regulations).

Important Issues: Massachusetts licensing law states that "no person shall engage in the business of or act as a broker or salesman directly, or indirectly, either temporarily or as an incident to any other transaction, or otherwise, unless he is licensed." The law and corresponding regulations strictly limit what an unlicensed person may do, but do not specifically define what activities are proper and improper. Some states have developed guidelines detailing activities an unlicensed personal assistant may perform. To date, Massachusetts has no such guidelines.

Unlicensed P.A.: Generally, unlicensed personal assistants should avoid all activities that bring them into direct contact with clients and customers. Unlicensed personal assistants should not provide any information about a property or listing to any prospective home purchaser, inspector, appraiser, or other persons. Only licensed persons should provide such information.

Compensation: Federal and state tax laws require that the relationship among the hiring agent, personal assistant and company be clearly defined. The agent or company and the personal assistant may use the employer-employee relationship or the independent contractor relationship. Unlicensed personal assistants may be paid directly by either the licensed broker or salesperson depending upon the hiring arrangement. The method of payment may be hourly, per activity, or salary. If compensated on a completed transaction basis, the assistant must be licensed as a real estate salesperson and must receive compensation directly from the licensed broker.

Frequently Asked Questions:

What may an unlicensed personal assistant do?

1. Prepare daily work schedule.
2. Screen telephone calls.
3. Prepare materials for listing presentation.
4. Schedule listings for tour.
5. Handle various computer functions, in-house.
6. Prepare lists of expired listings with telephone numbers.
7. Prepare comparative list of mortgage rates.
8. Coordinate (on behalf of broker) appointments.
9. Confirm appointments.
10. Coordinate mailing lists.
11. Coordinate mailings.

12. Send mailings to centers of influence.
13. Handle correspondence.
14. Photograph listings.
15. Put up/take down FOR SALE signs.
16. Pick up/return keys for homes to be shown.
17. Coordinate appointments for home showings.
18. Organize prospect card file.
19. Prepare materials for farming activities.
20. Update lists for farming purposes.
21. Set-up lock box.
22. Put up/take down SOLD signs.
23. Coordinate materials for FSBO leads.
24. Write/monitor ads.
25. Coordinate various paperwork to local MLS and handle various computer tasks.
26. Coordinate bank appointments and follow-up on loans in process.
27. Coordinate appointments for various inspections.
28. Coordinate drafts of materials for appraiser.
29. Coordinate delivery of materials to attorney.
30. Coordinate appointments for final readings.
31. Prepare Checklists to monitor the process of a purchase/sale.
32. Coordinate date and time for closing.
33. Confirm date and time for closing with buyer/seller.
34. Purchase and/or deliver closing gifts.
35. Attend sales meeting.
36. Prepare materials for Open Houses.
37. Pick up MLS books and materials.
38. Coordinate the mailing of special occasion cards to prospects, buyers and sellers.

Q: What functions may a licensed personal assistant permitted do as compared to an unlicensed personal assistant?

A: As licensed brokers or salesmen, personal assistants are legally entitled to perform all functions permitted by their broker or salesman license. However, licensed personal assistants are subject to all disclosure laws and other relevant requirements. Brokers and salesmen should implement an office policy establishing the roles of both licensed and unlicensed personal assistants. Consult legal counsel or the Board or Registration to ensure full compliance with licensing law and other obligations.

Q: May personal assistants attend Open Houses?

A: Although personal assistants may assist with the administrative duties involved with organizing and running open houses, it may be more trouble than its worth. Unlicensed persons may not engage in the business of or act as a broker or salesman directly, or indirectly. Generally, unlicensed personal assistants should avoid all activities that bring them into direct contact with clients and customers. Unlicensed personal assistants should not provide any information about a property or listing to any prospective home purchaser, inspector, appraiser, or other persons. Only licensed persons should provide such information. It is inevitable that a personal assistant will be confronted at open houses by potential buyers with inquiries regarding the sale property. While not necessarily instigated by the personal assistant, even a brief conversation or comment by an unlicensed personal assistant may violate licensing law and subject both the personal assistant and the employing broker or salesman to sanctions. A prudent broker or salesman will personally run open houses.

Q: What penalties exist for unlicensed personal assistants who engage in the business of or act as a broker or salesman directly, or indirectly?

A: M.G.L. chapter 112, section 87CCC imposes a fine of not more than \$500 on any unlicensed individual who acts as a broker or salesman. The personal assistant's broker or salesman may also be held liable for any licensing law violations by the personal assistant. Brokers and salesmen may be subject to fines or have their licenses suspended or revoked. Because of the severity of these penalties, all parties should be careful in complying with all licensing law requirements.

Q: May an unlicensed personal assistant contact potential sellers for the purposes of making appointments with a broker or salesman without violating the real estate licensing law?

A: Yes. Unlicensed personal assistants may schedule appointments with potential clients. However, the personal assistant may not discuss specifics, such as how much the seller's home may be worth, commissions, or marketing approach. Any substantive discussions pertaining to real estate sales, beyond purely administrative inquiries, will constitute a violation of the licensing laws.

For more information please contact the following:

Massachusetts Association of REALTORS® at (800) 370-LEGAL.

Massachusetts Board of Registration of Real Estate Brokers and Salesmen at (617) 727-2373.

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