

Unlicensed Assistants

find the article at: "<http://www.car.org/legal/licensing-folder/unlicensed-assistants/>"

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Real estate brokers—whether involved in real estate sales or mortgage loan brokerage—have become increasingly dependent upon the assistance of unlicensed personnel. Despite guidelines promulgated by the DRE in 1993 and legislative changes in 1999, there still exists a great deal of confusion as to those activities in which an unlicensed assistant may legally participate.

Before employing unlicensed assistants, real estate brokers should set up an office policy to determine who may hire these unlicensed assistants. The designated broker of a corporation or office should decide the required level of experience of a real estate salesperson who will be permitted to employ an unlicensed assistant. Brokers should specify all the necessary parameters in writing with each salesperson or associate-broker who will be using an unlicensed assistant. The following C.A.R. forms may be used: Independent Contractor Agreement (Between Broker and Associate-Licensee)—C.A.R. Form ICA, “Personal Assistant Contract (Between Associate-Licensee and Licensed or Unlicensed Assistant)—C.A.R. Form PAC, and “Broker/Associate-Licensee/Assistant Three-Party Agreement”—C.A.R. Form TPA. Ultimately, the real estate broker is responsible for the supervision and control of all the activities conducted by the salespersons and employees, including unlicensed assistants.

The following chart summarizes some of the do’s and don’ts for unlicensed assistants involved in real estate sales, property management, and mortgage loan brokerage activities.

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

UNLICENSED ASSISTANT ACTIVITY	CAN DO	DON'T DO
REAL ESTATE SALES TRANSACTIONS		
Access to Property	Allow a professional into the property to inspect or perform repair work, with the principal’s	Information about the property must be provided by the broker or salesperson, unless it is

	<p>permission. The unlicensed assistant must be present to allow a professional inspector into the home.</p>	<p>obtained from a data sheet prepared by a real estate licensee and that fact is made clear to the person requesting the information</p>
<p>Advertising</p>	<p>Prepare and design advertisements in connection with a transaction, if the advertisements are reviewed and approved by a real estate licensee prior to publication</p>	
<p>Arranging Appointments</p>	<p>Schedule appointments for real estate licensees to meet with their principals.</p> <p>Arrange and order reports and services from third parties (such as pest control companies, title companies, appraisers, credit check or report, or repair work) in connection with the transaction as directed by the real estate licensee.</p>	
<p>Cold Calling</p>	<p>Canvass for interest in using the services of a real estate broker. If a person answering the call indicates an interest in using the services of the broker or the kind of services the broker provides, the assistant must refer the call to a real estate licensee or schedule an appointment for the caller with a real estate licensee.</p>	<p>Cannot attempt to induce the prospective client to use the services of the broker regarding a specific property, transaction, or product.</p> <p>Cannot discuss the real property needs of the prospective client or use the call for solicitation purposes with respect to a specific property,</p>

Additional comments not in the DRE Guidelines:

The principal's permission to allow access to the property should be in writing.

Unlicensed assistants are prohibited from using lockbox keys for this purpose under most MLS Rules.

Additional comments not in the DRE Guidelines:

The advertisements must comply with all federal and state laws (e.g., Reg Z, TILA)

transaction, or product.

Additional comments not in the DRE Guidelines:

The broker may prepare a script that unlicensed assistants should follow when doing cold calls.

Unlicensed and licensed assistants who are classified as clerical users under local MLS rules may not discuss any MLS information with the public.

All federal and states laws concerning cold calling apply equally to real estate licensees and unlicensed assistants. Please see C.A.R. legal article, [Do-Not-Call, Do-Not-Fax, Do-Not-Email Laws Affecting REALTORS®](#)

Communicating With Principals

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

Communicating With the Public

Provide factual information to the public from written materials prepared by the real estate licensee.

Cannot 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.”

Additional comments not in the DRE Guidelines:

Unlicensed assistants can provide information to others in the real estate business, such as appraisers, other licensees, or title companies, or to the public, from writings prepared by the real estate licensee; but all questions about availability or details regarding a property or loan program must be directed to a real estate licensee.

Unlicensed as well as licensed assistants who are classified as clerical users under local MLS rules may not give any MLS information to the public.

Comparative Market Analysis

Make, conduct, or prepare a comparative market analysis (CMA) with the approval of and for use by the real estate licensee.

<p>Document Preparation, Delivering, and Signing</p>	<p>Prepare and complete documents and instruments under the supervision and direction of the real estate licensee. The documents or instruments must be reviewed or approved by the licensee prior to their delivery to the principal.</p> <p>Mail, deliver, pick up, or arrange the mailing, delivery, or picking up of documents or instruments related to a transaction.</p> <p>Obtain signatures from the principals, parties, or service providers.</p>	<p>Cannot discuss the content, relevance, or significance of the documents or instruments with either the principal, party to the transaction, or a service provider.</p>
<p><i>Additional comments not in the DRE Guidelines:</i></p> <p>Real estate licensees should contact their clients in advance to explain the documents or instruments to be signed. A log of the conversation between the licensee and principal is recommended. Unlicensed assistants should never discuss or explain in any manner the contents of any documents.</p>		
<p>Document Review</p>	<p>Review, as instructed by the real estate licensee, transaction documents to check for completeness or compliance. The final determination of completeness or compliance must be made by the real estate licensee.</p> <p>Review transaction documents for the purpose of making recommendations to the real estate licensee on a course of action with respect to the transaction.</p>	
<p><i>Additional comments not in the DRE Guidelines:</i></p> <p>Drafting and interpretation of legal documents and providing legal advice should be referred to an attorney.</p>		
<p>Open House</p>	<p>Assist real estate licensees, with</p>	

<p>the principal's consent, at an open house intended for the public by:</p> <ul style="list-style-type: none"> ▪ Placing signs. ▪ Greeting the public. ▪ Providing factual information from or handing out preprinted materials that were prepared by or reviewed and approved for use by a real estate licensee. ▪ Arranging appointments with the real estate licensee. 	<p>Cannot show or exhibit property.</p> <p>Cannot discuss terms or conditions of a possible sale.</p> <p>Cannot discuss other features of the property, such as location, neighborhood, or schools.</p> <p>Cannot engage in other conduct that "is used, designed, or structured for solicitation purposes."</p>
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Additional comments not in the DRE Guidelines:

Unlicensed assistants can do the following:

- Open the property to be viewed by prospective buyers; however, most local MLS rules prohibit unlicensed assistants from using a lockbox key or programmer for this purpose. Unlicensed assistants, with the owner's permission, can use regular house keys to open the property.
- Assist real estate licensees in a "broker open house" (i.e., open houses accessible only to real estate licensees). Since "broker open houses" or "caravans" or "tours" are often sponsored by the local association or MLS, there maybe rules relating to whether or not an authorized real estate licensee must be present on the property.
- Transport principals or related parties to the property.
- The principal's consent for open houses should be in writing.

It is recommended that real estate licensees be present at the open house, since all questions or negotiations about the property must be directed to the licensee.

<p>Rental Property Transactions</p>	<p><i>Additional comments not in the DRE Guidelines:</i></p> <p>Resident manager or employees of a property management company that manages a residential apartment building, complex, and court under the supervision of a real estate</p>
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	<p>licensee are permitted to show rental units, handle applications, accept security deposits or fees, and accept leases or agreements. (Cal. Bus. & Prof. Code § 10131.01(a)(1) and (a)(3).)</p> <p>Employees of a broker are permitted to solicit, arrange, or accept reservations or money for “transient occupancies” in a dwelling unit in a common interest development, apartment building or complex, or in a single-family home. (Cal. Bus. & Prof. Code § 10131.01(a)(2).)</p>
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Trust Funds	Accept, account for, or provide a receipt for trust funds received from a principal or a party to the transaction.	
	<p><i>Additional comments not in the DRE Guidelines:</i></p> <p>An unlicensed assistant is permitted to withdraw funds from a trust account provided that the unlicensed assistant is authorized in writing by the real estate broker and has fidelity bond coverage at least equal to the maximum amount of the trust funds to which the assistant has access at any time. (DRE Regulation § 2834.)</p>	

MORTGAGE LOAN BROKERAGE

Mortgage Loan Transactions	An unlicensed assistant to a real estate broker may assist the broker in meeting the broker’s obligations to its customers with “residential mortgage loan transactions” (a complex term, but generally meaning loans secured by residential one-to-four family dwellings) in which an institutional lender provides financing. (Cal. Bus. & Prof. Code § 10133.1(c)(1).)	The unlicensed assistant may not participate in any negotiations occurring between the principals. (Cal. Bus. & Prof. Code § 10133.1(c)(1).)
	<p>DRE Regulation 2841 identifies 15 separate activities that can be performed by unlicensed assistants. The following are a few examples:</p> <ul style="list-style-type: none"> ▪ Prepare and design advertising relating to loan transactions for broker review and written approval prior to its distribution, circulation, use or publication. ▪ Distribute, circulate, use, or publish preprinted brochures, 	

flyers, fact sheets or other written materials relating to loans negotiated by the broker and which have been reviewed and approved in writing by the broker prior to distribution, circulation or publication. Materials may not contain the name, address or telephone number of the unlicensed assistant.

- Provide written factual information about loan terms, conditions or qualification requirements to a prospective borrower that has been either prepared by the broker, or reviewed and approved in writing by the broker.
- Notify a prospective borrower of the information needed to complete a loan application.
- Enter a prospective borrower's information on a pre-printed application form or a preformatted computer database without providing counseling or advice.
- Contact prospective lender to determine the loan application status and notify a prospective borrower of the loan application status.
- Accept credit report fees and appraisal fees from prospective borrowers.

This legal chart is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit car.org.

Readers who require specific advice should consult an attorney. C.A.R. members requiring legal assistance may contact C.A.R.'s Member Legal Hotline at (213) 739-8282, Monday through Friday, 9 a.m. to 6 p.m. and Saturday, 10 a.m. to 2 p.m. C.A.R. members who are broker-owners, office managers, or Designated REALTORS® may contact the Member Legal Hotline at [\(213\) 739-8350](tel:213-739-8350) to receive expedited service. Members may also submit online requests to speak with an attorney on the Member Legal Hotline by going to <http://www.car.org/legal/legal-hotline-access/>. Written correspondence should be addressed to:

CALIFORNIA ASSOCIATION OF REALTORS®
Member Legal Services
525 South Virgil Avenue
Los Angeles, CA 90020

The information contained herein is believed accurate as of July 9, 2009. It is intended to provide

general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney.

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