

Unlicensed Assistants Dos and Don'ts

When utilizing the services of an unlicensed assistant, a broker (or a salesperson) should ensure that the assistant's activities never cross the line into what could be considered licensed activity. Common activities that are acceptable and those to be avoided are as follows:

- **Open Houses:** With the principal's consent, unlicensed assistants may assist licensees at an open house intended for the public by placing signs, greeting the public, or handing out preprinted materials prepared or reviewed by the licensee. **Only a licensee may show or exhibit the property, discuss terms and conditions of a possible sale, or engage in any other conduct which could be considered solicitation with respect to the property.**
- **Comparative Market Analysis:** Unlicensed assistants may *prepare* a comparative market analysis. The comparative market analysis must be approved by and is for use with a client solely by the licensee.
- **Arranging Appointments:** Unlicensed assistants may make or schedule appointments for licensees to meet with a principal or party to the transaction, and as directed by the licensee may arrange for and order reports and services from a third party in connection with a transaction (such as a pest control inspection or a credit check and report).
- **Access to Property:** With the principal's consent, unlicensed assistants may provide access to the property for inspections or repairs. Information about the real property that is needed by the person making the inspection or repair must be provided by the licensee, unless it comes from pre-printed material prepared by the licensee.
- **Preparation of Advertising for Review:** Unlicensed assistants may prepare and design advertising relating to a transaction if the advertising is reviewed and approved by the licensee prior to its publication.
- **Preparation of Documents for Review:** Unlicensed assistants may prepare and complete documents if the final documents will be reviewed or approved by the licensee before being delivered to a principal or party to the transaction.
- **Delivery & Signing Documents:** Unlicensed assistants may deliver or pick up documents related to a transaction (including obtaining signatures) if they do not discuss the content or significance of the documents with a principal or party to the transaction.
- **Document Review:** Unlicensed assistants may review transaction documents for completeness or compliance, if the final determination as to completeness or compliance is made by the licensee.
- **Cold Contacting of Potential Prospects:** Generally cold calls are intended to prospect for new business. While an unlicensed assistant is not prohibited from making such calls, if the person contacted indicates that they are interested in using the services of a broker, or wants more information about what services a broker can provide, that person must be referred to a licensee for further discussion. **At no time may an unlicensed assistant attempt to induce the person being called to use a broker's services.**

UNLICENSED ASSISTANT ACTIVITY	CAN DO	DON'T DO
REAL ESTATE SALES TRANSACTIONS		
Access to Property	<p>Allow a professional into the property to inspect or perform repair work, with the principal's permission. The unlicensed assistant must be present to allow a professional inspector into the home.</p>	<p>Information about the property must be provided by the broker or salesperson, unless it is 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><i>Additional comments not in the DRE Guidelines:</i></p> <p>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 the California Model MLS Rules. A local MLS may have modified this rule and should be consulted prior to giving an unlicensed assistant access.</p>		
Advertising	<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><i>Additional comments not in the DRE Guidelines:</i></p> <p>The advertisements must comply with all federal and state laws (e.g., Reg Z, TILA)</p>		

<p>Arranging Appointments</p>	<p>Schedule appointments for real estate licensees to meet with a principal or party to the transaction.</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 Contacting</p>	<p>Assist in the performance of cold contacting potential prospects by making phone calls or the use of electronic or social media to canvass for interest in using the services of a broker, or if there is an interest in ascertaining the kind of services a broker can provide. If the potential prospect 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, transaction, or product.</p>

	<p><i>Additional comments not in the DRE Guidelines:</i></p> <p>The broker may prepare a script that unlicensed assistants should follow when doing cold calls.</p> <p>Unlicensed and licensed assistants who are classified as clerical users under local MLS rules may not discuss any MLS information with the public under the California Model MLS Rules. A local MLS may have modified this rule and should be consulted prior to the unlicensed assistant having such a discussion with the public.</p> <p>All federal and state 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®</p>	
<p>Communicating With Principals</p>	<p>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.</p>	
<p>Communicating With the Public</p>	<p>Provide factual information to the public from written materials prepared by the real estate licensee.</p>	<p>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.”</p>

	<p><i>Additional comments not in the DRE Guidelines:</i></p> <p>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.</p> <p>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 under the California Model MLS Rules. A local MLS may have modified this rule and should be consulted prior to the unlicensed assistant having such a discussion with the public.</p>	
<p>Comparative Market Analysis</p>	<p>Make, conduct, or prepare a comparative market analysis (CMA) subject to the approval of, and for use by, the real estate licensee.</p>	
<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>	
Document Review	<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 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>
<p><i>Additional comments not in the DRE Guidelines:</i></p> <p>Unlicensed assistants <u>can</u> do the following:</p> <ul style="list-style-type: none"> ● 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 may be rules relating to whether 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. <p>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>		

<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 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>	
<p>Trust Funds</p>	<p>Accept, account for, or provide a receipt for trust funds received from a principal or a party to the transaction.</p>	
	<p><i>Additional comments not in the DRE Guidelines:</i></p> <p>An unlicensed assistant who is an employee of the broker is permitted to withdraw funds from a trust account provided 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>	
<p>MORTGAGE LOAN BROKERAGE</p>		

<p>Mortgage Loan Transactions</p>	<p>An unlicensed assistant to a real estate broker may assist the mortgage loan 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).)</p>	<p>The unlicensed assistant may not participate in any negotiations occurring between the principals. A loan processor or underwriter performing clerical and administrative tasks, such as those designated below, in connection with a mortgage loan, and at the direction of a mortgage loan originator, and who is an employee of the mortgage loan originator, shall NOT represent to the public (by business cards, stationery, brochures or other means) that the assistant can or will perform tasks as a mortgage loan originator. Cal. Bus. & Prof. Code § 10166.01(f)</p>
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DRE Regulation 2841(a) identifies 15 separate activities that can be performed by unlicensed assistants provided the assistant is an employee of the broker (DRE Regulation 2841(a) and (c)) The following are a few examples:

- 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. The unlicensed assistant may not however provide counseling or advice to the prospective borrower regarding the information provided.
- Notify a prospective borrower of the information needed to complete a loan application, again without providing counseling or advice to the borrower.
- Enter a prospective borrower's information on a pre-printed application form or a preformatted computer database without providing counseling or advice.
- Contact a 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.

Guidelines for Unlicensed Assistants who Work in the Real Estate Industry

Introduction

These guidelines have been written to offer some direction to California real estate licensees and others regarding what unlicensed assistants can lawfully do in the real estate arena without having a real estate license*.

Section 10131 of the California Business and Professions Code lists the activities that require a real estate broker license. A licensed real estate salesperson must perform any of such licensed activities under the supervision of his or her responsible broker. Specific “clerical” exemptions to Section 10131 are provided in Section 10133.2 of that code.

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, employees, and agents 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. Individuals engaging in business as a real estate broker 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 non-licensed 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 are guidelines, 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 Contacting of Potential Prospects

Unlicensed assistants may assist in the performance of cold contacting potential prospects. Cold contacting of potential prospects is the making of telephone calls or the use of electronic or social media to canvass for interest in using the services of a real estate broker. Should the person responding 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 with interest 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 an unlicensed assistant 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 Houses

With the principal's consent, unlicensed assistants may assist 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 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

Unlicensed assistants may make, conduct or prepare a comparative market analysis subject to the approval of, and for use by, the licensee.

Communicating With the Public

Unlicensed assistants may provide 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

Unlicensed assistants can make or schedule 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, an unlicensed assistant can arrange for and order 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, unlicensed assistants can be 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 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

Unlicensed assistants can prepare and design 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

Unlicensed assistants can prepare and complete 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 & Signing Documents

Unlicensed assistants may mail, deliver, pick up, or arrange 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

Unlicensed assistants can accept, account for, and or provide a receipt for trust funds received from a principal or a party to the transaction.

Communicating with Principals, etc.

Unlicensed assistants can communicate 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

Unlicensed assistants can also review, as instructed by the responsible/supervising licensee, transaction documentation for completeness or compliance, providing the final determination as to completeness or compliance is made by the broker or associate licensee.

Moreover, unlicensed assistants may review transaction documentation for the purpose of making recommendations to the broker on a course of action with respect to the transaction.

*We hope that 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 understand that because of the limiting nature of the Guidelines, as opposed to a statute or regulation, that they will not bind or obligate, nor are they intended to bind and obligate the Bureau or Department of Real Estate, or 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. Another term often used for the latter is a “broker associate”.

*** The term “licensee” means “broker” or “associate licensee.”

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