

UNLICENSED ASSISTANTS PRIMER

Hello Michigan Realtors® and welcome back to Letter of the Law, a monthly video series designed to provide a primer on various legal issues impacting your industry. I'm Brian Westrin and today's legal primer will be on the topic of Unlicensed Assistants.

In today's industry, many brokers and salespersons hire assistants to aid them in providing real estate services. These assistants can be hired to assist an entire firm or they can be hired to assist a single salesperson or team. The assistants can be either licensed or unlicensed. In some situations, an assistant must be licensed in order to remain compliant with Michigan law. This licensure requirement will depend on the types of tasks the assistant is expected to perform under the brokerage's business model.

Making a distinction between licensed and unlicensed assistants is actually very important. Licensed assistants can perform any real estate-related activity that is permitted under Michigan's licensing statute. An unlicensed assistant, however, may not perform real estate-related activities that require a license. This means that if you plan to have assistants who perform tasks that require a license, such as holding open houses or showing properties, it's necessary that that assistant is also a licensee. Before hiring assistants, brokers and salespersons would benefit by making a list of duties that the assistant will be expected to perform and then comparing that list to duties that require a real estate license. This will help to determine whether or not it's necessary to hire a licensed assistant over an unlicensed assistant.

Different states have different standards when it comes to what activities an unlicensed assistant may or may not perform. Understanding these standards is a crucial step in staffing a brokerage and remaining compliant with Michigan's licensing requirements. In the State of Michigan historically, it has been understood that an unlicensed assistant **may** perform the following activities:

1. Tasks that are strictly clerical (such as answering phones, directing calls, greeting customers, etc.);
2. Acting as a courier in picking up or delivering documents on behalf of the licensee;
3. Assisting licensees during an open house. The key word being "assist" – as unlicensed assistants cannot independently show property or host open houses. At the open house, an unlicensed assistant may:
 - Greet potential homebuyers as they arrive;
 - Hand out prepared printed materials;
 - Have prospects sign a guest book to record names, addresses, and phone numbers;
 - Escort potential buyers throughout the home for security purposes, but not to answer material questions about the home.

In keeping compliant with state licensing law, it is crucial that brokerages identify those activities that are off limits to individuals who do not have a real estate license. In the State of Michigan, it has historically been understood that an unlicensed assistant **may not** engage in the following activities:

1. Independently hold open houses for Realtors®;
2. Show properties to potential buyers;
3. Solicit listings or other business via phone;
4. Answer any questions relating to financing, title insurance, or closings;

5. Provide any additional information to the public aside from information that has already been set forth in prepared promotional material that has already been distributed to the public;
6. Have their names printed on business cards or stationary in a way that would imply that they are a real estate salesperson or broker;
7. Hold themselves out as a real estate salesperson or broker;
8. Perform any acts for which a license is required under Michigan Real Estate License Law (MCL 339.2501).

Staying compliant with Michigan's licensing law is an absolute must for a brokerage. Licensees who allow unlicensed assistants to engage in real estate-related activities on their behalf face hefty penalties for non-compliance with the Occupational Code. These penalties include:

- Placement of a limitation on the license
- Suspension of license
- Denial of license renewal
- Revocation of license
- Censure
- Probation
- Restitution
- Administrative fine up to \$10,000.

For this reason, brokers should adopt policy and training to ensure that all personnel understand the scope of their respective role and remain compliant with the state licensing law.

Finally, while we will discuss this issue in more detail in a future video, keep in mind that an unlicensed assistant will never qualify as an independent contractor and that a licensed assistant will only qualify as an independent contractor in very limited circumstances. If the assistants in your office are not treated as employees, it is important that you consult with an attorney.

As always, thank you for tuning in and watching this legal video primer. If you have questions or would like to suggest topics for future videos, please send suggestions to the email below. Again, thanks for watching and see you next time.