

**REAL ESTATE ASSISTANTS, TRANSACTION COORDINATORS, AND OFFICE
STAFF – LICENSED AND UNLICENSED**

This guideline refers to assistants, transaction coordinators (TCs), and office staff—licensed and unlicensed—within the framework of a real estate transaction. For the purposes of this guideline, all of these roles will be referred to as either an “unlicensed assistant” or a “licensed assistant.”

Designated brokers need to be especially aware of their supervisory duties under the license law. Brokers have always been—and continue to be—responsible for the actions of their licensed and unlicensed staff. Part of that responsibility includes supervising assistants and ensuring any unlicensed personnel is not engaging in any activities that require a real estate license.

Furthermore, designated brokers should have a written office policy explaining the duties, responsibilities, and limitations on the use of assistants—both licensed and unlicensed. Designated brokers should consider addressing how to handle a situation that involves assistants and dual agency. There may be times when a licensed assistant is employed by another brokerage or licensee involved in the same transaction. In these scenarios, additional safeguards should be put in place, including advising the involved customer or client that an assistant will be used.

These policies, along with this guideline, should be reviewed by and explained to all licensees, assistants, and any other staff employed by the brokerage.

Confidentiality agreements or non-disclosure agreements (NDAs) should be considered when third parties have access to **ANY** client information.

UNLICENSED ASSISTANTS

The Commission often receives questions from licensees on the use of unlicensed assistants. Inquiries generally fit into two categories: (1) whether the activity performed is one which requires a license, and (2) what are the supervisory responsibilities of an employing broker?

License law prohibits unlicensed persons from negotiating, listing or selling real property. Foremost to the use of unlicensed assistants is careful restriction of their activities so as to avoid illegal brokerage practice. Unlicensed assistants should never independently draft legal documents such as listing and sales contracts, nor should they offer opinions, advice or interpretations in relation to those documents. In addition, unlicensed assistants should not distribute any information concerning a listed property other than that prepared by the employing broker or licensee.

Licensees should not directly share commissions with unlicensed assistants. An assistant may be paid on a per transaction basis as part of a regulated real estate transaction.

However, unlicensed assistants MAY:

1. Perform clerical duties for an employing broker or salesperson which may include the gathering of information for a listing.
2. Provide property access to contractors, home inspectors, & appraisers, with seller permission. However, they **MAY NOT** provide property access to potential buyers.
3. Distribute prepared information at an open house, so long as no negotiating, offering, selling or contracting occurs.
4. Answer simple questions about the employing brokerage's listed properties with information from MLS printouts, property flyers, data sheets and marketing materials prepared by the brokerage and/or employing licensee.
5. Deliver paperwork to licensees on the other side of the transaction.
6. Deliver paperwork to customers or clients, so long as the paperwork has been reviewed and approved by the employing licensee and no opinions, advice, or interpretations of such documents is provided by the unlicensed assistant.
7. Assist in the preparation of market analyses for sellers or buyers under the direction and approval of the licensee.

LICENSED ASSISTANTS

Assistants who hold an active real estate license and the brokers who employ or allow their licensees to employ them should be aware that the brokers are fully responsible for **ALL** licensees, whether they are called assistants or not; furthermore, all licensed assistants are fully subject to Idaho License Law and Rules.

Assistants, whether licensed or not, **CANNOT** assume the overarching responsibilities of a transaction once it is under contract. All parties to a transaction must be able to contact and receive a response from the licensee of record during the transaction. As such, licensed assistants are unable to independently draft contracts, addendums, or counter offers; negotiate on behalf of their supervising licensee's behalf; conduct listing presentations; or collect earnest money.

Furthermore, licensed assistants should not disclose confidential information, including any terms or conditions of other offers received or seen. The licensee of record should be the main point of contact to avoid any accidental forwarding or sharing of information or communication to parties on the other side or outside of the transaction. Unless otherwise directed, licensed assistants should not be communicating or reminding the other side of the transaction about upcoming deadlines.

However, licensed assistants MAY:

1. Be paid on a flat fee transaction basis or as a salaried/hourly employee.
2. Review contracts for compliance and accuracy.
3. Send paperwork out for signature.
4. Provide customers and clients with basic reminders about deadlines or next steps.
5. Assist the licensee of record with maintaining documents and documentation.

This guideline is not a new law but is an agency interpretation of existing law.

For more information on this guideline, please contact:

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6. Coordinate inspections, appraisals, or contractor related activities with sellers, other licensees, and relevant professionals.
7. Ensure all documents are transmitted to the designated broker.
8. Provide updates and deliver documents to cooperating licensees, lenders, title companies, and customers and clients as directed by the employing licensee.
9. Open a file with title and escrow or coordinate date and time of closing as directed by employing licensee.

BOTH LICENSED AND UNLICENSED ASSISTANTS:

Brokers and licensees must remember that any assistants involved with a transaction must be under the supervision of the licensee of record. The licensee of record is ultimately responsible for their assistant's actions or inactions, and they must actively ensure that the assistant is fulfilling the responsibilities assigned to them.

Whether an assistant is licensed or unlicensed, the licensee of record must be cognizant of the information that may be shared or forwarded in any emails or text messages. Licensees should **NEVER** share passwords with assistants. When hiring an assistant, especially one who works with other brokerages or licensees, caution should be taken to understand their processes and safeguards.

When considering hiring any assistant, licensees should have a discussion with their broker, because ultimately, the broker is responsible for the actions of all assistants.

If an assistant is utilized, licensees should take the time to set their expectations and make an effort to understand all of the paperwork behind their transactions. As the agent of record, it is imperative they are able to recognize when something is incorrect.

Licensees should also have a conversation with their customer or client to ensure they are aware that a third party may have access to their confidential information.

With brokers developing and implementing policies for the use of assistants and routine procedures for monitoring their activities, an assistant can serve as a valuable tool in the success of the transaction. As with any other activity involving the delegation of an act to another, the freedom and convenience afforded to the broker in allowing the use of assistants carries with it certain responsibilities for that person's actions.

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