
MEMORANDUM

TO: TERRANCE KELLY
FROM: DEIDRE STOKES KIRKLAND, ATTORNEY & COUNSELOR AT LAW
SUBJECT: LEGAL RESEARCH
DATE: 7/20/2009

In our meeting on Friday, July 17, 2009 you asked me to research the current code rules for the State of Georgia regarding the activities that are authorized for an unlicensed assistant to a licensed broker. I spent four (4) hours researching the topic and four (4) hours drafting this memorandum.

I. Rule of the Georgia Real Estate Commission

Whether in an office or virtually, research has shown that the use of an unlicensed assistant can truly provide more freedom to a real estate agent. I found numerous references that address the topic of unlicensed assistants. Firstly the preeminent authority on rules that guide real estate professionals in the state of Georgia is the Georgia Real Estate Commission (hereinafter referred to as “the Commission”). Chapter 520-1-.07(6) of the official Rules of the Commission states, in significant part, as follows:

(6) Utilizing Unlicensed Support Personnel – Task Guidelines.

(a) Whenever a licensee who is affiliated with a broker engages support personnel to assist the affiliated licensee in the conduct of the real estate brokerage business, both the firm and the affiliated licensee are responsible for the acts of the support personnel; for assuring that the support personnel comply with the requirements of this rule and the license law; and for seeing that any licensed support personnel are properly licensed with the firm. Unless such support personnel holds an active real estate license, the support personnel may not perform any duties and tasks of a real estate licensee and may perform only ministerial duties, those that do not require discretion or the exercise of the licensee’s own judgment.

Rule section Chapter 520-1-.07(6) also acknowledges that it does not in anyway “prohibit an individual employed by a broker to assist in the management of property from undertaking those activities permitted by O.C.G.A. § 43-40-29 (10)”, which refers to the tasks that an employee may handle in the area of property management services on property on which the broker has a written management agreement that the broker procured from and negotiated with the owner, provided that such individual’s activities are explicitly authorized by the broker in a written agreement between the broker and the employee. Section 43-40-29 (10) continues on to cite other specific activities to

which the employee is limited to engaging in regarding property management.¹

A. Written Agreement

One of the first requirements for a real estate brokerage firm that wishes to engage the assistance of unlicensed or support personnel, in order to be in compliance with the rules of the Commission, is to obtain a written agreement of services. Whether an assistant is acknowledged as an employee or independent contractor, the brokerage firm is responsible to outline the activities that a support personnel or unlicensed assistant may conduct on behalf of the licensee. Based upon what I know of your current practice it appears evident that, as an agent of Solid Source Realty, Kcare Realty Group is authorized to employ unlicensed personnel at will and that the parameters are documented in a contract between your firm and Solid Source Realty of Georgia. If your brokerage firm does not have said agreement in writing further legal advice may be needed in that respect.

In addition to an agreement on behalf of the brokerage firm, a written agreement between the licensed broker and the unlicensed assistant will need to be in place to be in compliance with the Commission. Chapter 520-1-.70(6) (d) (2) states that a real estate firm must “enter into a written agreement with the support personnel assisting its affiliated licensee specifying any duties that the support personnel may undertake in behalf of the affiliated licensee.” The firm is responsible to assure that said agreement is completed and that it includes “the manner in which the support personnel shall be compensated.”²

B. Guidelines for Unlicensed Assistant

a. Tasks Allowed

The laws and regulations of each state govern the activities of an unlicensed real estate assistant. They are also determined by office policy. To further assist you in understanding and complying with state regulations the Commission Rule Chapter 520-1-.07(6) (e) lists in detail the tasks that brokers can authorize to be completed by an unlicensed assistant. Although the list is comprehensive and provides a reasonable guideline, it is in no way exhaustive. The following are activities that the Commission has identified which an unlicensed support personnel or assistant can perform under the direct supervision of a licensee affiliated with a broker:

1. Answering the phone and forward calls to a licensee;
2. Submitting data on listings to a multiple listing service;
3. Checking on the status of loan commitments after a contract has been negotiated;
4. Assembling documents for closings;
5. Securing documents that are public information from the courthouse and other

¹ (A) Delivering a lease application, a lease, or any amendment thereto to any person; (B) Receiving a lease application, a lease, or any amendment thereto, a security deposit, rental payment, or any related payment for delivery to and made payable to the broker or the owner; (C) Showing a rental unit to any person, provided that the employee is acting under the direct instructions of the broker, and executing leases or rental agreements; (D) Providing information authorized by the broker about a rental unit, a lease application, or a lease; (E) Providing information to a tenant about the status of such tenant's security deposit or rent payments or to an owner about the owner's financial accounts and payments from the owner's tenants; and (F) Performing any ministerial acts that are explicitly authorized by the broker in a written agreement between the broker and the employee. Any broker utilizing the services of such an employee shall be held responsible under this chapter for the activities of that individual.

² Georgia Real Estate Commission Rule, Chapter 520-1-.07(6)(d)(3)

sources available to the public;

6. Having keys made for company listings and installing or removing lock boxes from company listings;
7. Writing advertisements and promotional materials for the approval of the licensee and supervising broker;
8. Placing advertisements in magazines, newspapers, and other media as directed by the supervising broker;
9. Receiving, recording, and depositing earnest money, security deposits, and advance rents;
10. Typing contract forms as directed by the licensee and the supervising broker;
11. Monitoring personnel files and license reports from the Commission;
12. Computing commission checks;
13. Placing signs on property and removing such signs;
14. Ordering items of routine repair as directed by a licensee;
15. Acting as courier for such purposes as delivering documents or picking up keys [the licensee remains responsible for assuring delivery of contracts and closing documents as required by O.C.G.A. Section 43-40-25 (a)(19) & (20)];
16. Scheduling appointments with the owner or the owner's agent in order for a licensee to show listed property;
17. Arranging dates and times for inspections;
18. Arranging dates and times for the mortgage application, the pre-closing walk through, and the closing;
19. Scheduling an open house;
20. Accompanying a licensee to an open house or a showing only for security purposes;
or
21. Performing physical maintenance on a property.

b. Prohibited Tasks

Conversely the Commission has also created a list that generally outlines the tasks that are not permitted by unlicensed support personnel.³ The prohibited tasks are as follows:

1. Making cold calls by telephone or in person or otherwise contacting the public for the purpose of securing prospects for listings, leasing, sales, exchanges, or property management;
2. Hosting open houses, kiosks, home show booths, or fairs;
3. Preparing promotional materials or advertisements without the review and approval of licensee and supervising broker;
4. Showing property;
5. Answering any questions on title, financing, or closings (other than the time and place);
6. Answering any questions regarding a listing except for information on price and amenities expressly authorized in writing by the licensee;
7. Discussing or explaining a contract, listing, lease, agreement, or other real estate document with anyone outside the firm;
8. Negotiating or agreeing to any commission, commission split, management fee, or referral fee on behalf of a licensee;
9. Discussing the attributes or amenities of a property, under any circumstances, with a prospective purchaser or lessee;
10. Discussing with the owner of real property, the terms and conditions of the real property offered for sale or lease;
11. Collecting or holding deposit monies, rent, other monies or anything of value received from the owner of real property or from a prospective purchaser or lessee;
12. Providing owners of real property or prospective purchasers or lessees with any advice, recommendations or suggestions as to the sale, purchase, exchange, or leasing of real property that is listed, to be listed, or currently available for sale or lease; or
13. Holding himself or herself out in any manner, orally or in writing, as being licensed or affiliated with a particular firm or real estate broker as a licensee.

Again, the Commission recognizes that neither list is absolute in its definitions of what can and can not be done by unlicensed assistants. Other resources provide additional insight. In 2007 the Georgia Association of Realtors form entitled “Agreement Between Broker and Unlicensed Assistant” also listed the restriction that an unlicensed assistant or support personnel “cannot be

³ Georgia Real Estate Commission Rule, Chapter 520-1-.07(6) (f).

compensated based on the level of real estate activity⁴. ActiveRain.com is a website geared toward providing information and a forum for brokers across the country to discuss and blog the most recent trends in the profession. This website states in general reference that an unlicensed assistant may not receive a commission or percentage of a commission based on a real estate transaction, but goes on to state that said support personnel are authorized to receive an incentive bonus in addition to their salary.⁵

On ActiveRain.com comments from other real estate brokers and others in the real estate profession have included, in more detail, activities ideal for unlicensed assistants in this age of ever-increasing technology and strategy. Some different tasks that may be considered useful for you or your firm are as follows:

Prepare and distribute promotional flyers and cards; Maintain data and information on Websites; Prepare data for listing presentations; Generate reports for MLS; Record Escrow deposits and/or receive escrow deposits for deposit with broker; Maintain files; Provide objective data and information to appraisers; Schedule home inspections and follow-up on reports; Hand out and provide information from pre-printed materials; Prepare listing and sales kits; Prepare CMAs; Communicate with lenders; Create Visual Tours; Compile data for weekly reports; Order repairs; Mail-out promotional materials via mail, fax or email; Create Seller and Buyer Guides; Create Neighborhood Books; Conduct surveys; Provide bookkeeping services; Manage licenses, subscriptions and membership accounts; Place routine telephone calls regarding the collection of late rent payments; Provide transportation for a client to a showing; Write blog articles on agent's blog; Take pictures of listed property; Work to facilitate the closing by and between the title company attorney and buyer & seller; Work with the media and public relations people on behalf of the agent.⁶

II. Conclusion

In Conclusion, before hiring an assistant the licensee should fully review the duties expected and be sure everyone has a clear understanding of the job description. An unlicensed assistant can handle a myriad of responsibilities and activities that free up the agent to do what they do best.⁷ In fact the utilization of a competently trained unlicensed assistant can allow an agent or brokerage to segue into a whole new realm of business with ease. The licensee and the assistant/support personnel must coordinate both in writing and in actions about the goal to be achieved for each party by the inclusion of another member of the team.

If there is ever a question of whether a specific task is appropriate for an unlicensed assistant or support personnel the best practice is to simply contact a representative of the Georgia Real Estate Commission either by phone or online. Through the website you can quickly submit an email question to grecmail@grec.state.ga.us and you will likely receive an answer within 1-2 business days.

⁴ This list has been adapted from the Georgia Association of Realtors'™ form C07, titled "**Agreement Between Broker and Unlicensed Assistant**", number 9. Copyright 1/1/2007.

⁵ <http://activerain.com/blogview/5645/what-can-my-unlicensed-real-estate-assistant-do->

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⁷ "Utilization of the Unlicensed Assistant" on Real Estate Radio USA, www.activerain.com.