



CONNECTICUT REAL ESTATE COMMISSION POLICY ON USE OF UNLICENSED PERSONS BY LICENSEES

Licensees, both brokers and salespersons, often use unlicensed persons, either employed or contracted, to perform various tasks related to a real estate transaction which do not require a license. Such persons, for example, are used as personal assistants, clerical support staff, closing secretaries, etc.

The Connecticut Real Estate Commission prohibits unlicensed persons from negotiating, listing, selling, buying, or renting real property for another for a fee. It is, therefore, important for employing brokers and other licensees using such persons to carefully restrict the activities of such persons so that allegations of wrongdoing under Connecticut General Statutes or State Regulations can be avoided. Licensees should not share commissions with unlicensed persons acting as assistants, clerical staff, closing secretaries, etc. The temptation for such unlicensed persons, in such situations, to go beyond what they can do and negotiate or take part in other prohibited activities is greatly increased when their compensation is based on the successful completion of the sale. In order to provide guidance to licensees with regard to which activities related to a real estate transaction unlicensed persons can and cannot perform, the commission establishes the following Policy: Activities which can be performed by unlicensed persons who, for example, act as personal assistants, clerical support staff, closing secretaries, etc., include, but are not necessarily limited to:

1. Answer the phone and forward calls to licensee.
2. Transmit listings and changes to a multiple listing service.
3. Follow up on loan commitments after a contract has been negotiated.
4. Assemble documents for closing.
5. Secure documents; i.e., public information from town/city hall, courthouse, sewer district, water district, tax assessor, etc.
6. Have keys made for company listings.
7. Write and prepare ads (with review of licensee), flyers and promotional materials and place such advertising.
8. Record and deposit earnest money and other trust funds.
9. Type contract forms under direction of licensee.
10. Monitor licenses and personnel files.
11. Compute commission checks.
12. Place signs on property.
13. Order items of routine repair as directed by licensee and/or supervising broker.
14. Act as courier service to deliver documents, pick up keys, etc.
15. Schedule appointments for licensee to show listed property.
16. Measure property.

Activities which cannot be performed by unlicensed persons who, for example, act as personal assistants, clerical support staff, closing secretaries, etc., include but are not necessarily limited to:

1. Host open houses, kiosks, home show booths or fairs, or hand out materials at such functions.
2. Show property.
3. Answer any questions from consumers on listing, title, financing, closing, etc.
4. Contact cooperative brokers, whether in person or otherwise, regarding any negotiations or open transactions.
5. Discuss or explain a contract, offer to purchase, agreement, listing, or other real estate document with anyone outside the firm.
6. Be paid on the basis of commission, or any amount based on listings, sales, etc.
7. Negotiate or agree to any commission, commission split or referral fee on behalf of a licensee.
8. Place calls that would require a license such as cold calls, solicit listings, contacting expired listings or for sale by owners, or extending invitations to open houses.
9. Attend inspections or pre-closing walk-through unless accompanied by licensee.
10. The unlicensed assistant is not a decision maker; rather, shall take all direction from supervising licensee.

Employing brokers, whether they are employing unlicensed persons or whether licensees under their supervision are using unlicensed persons as personal assistants or the like, are responsible for assuring that such unlicensed persons are not involved in activities which require a license and/or activities which violate this policy. Brokers should establish guidelines for the use of unlicensed persons and procedures for monitoring their activities. It is the responsibility of the designated broker to assure that unlicensed persons, either directly employed or contracted, or employed or contracted by licensees under his or her supervision, are not acting improperly.



CONNECTICUT REAL ESTATE COMMISSION POLICY ON AGENCY

Summary

Two significant new agency laws were enacted in 1996 (Public Act 96-159) and 1999 (Public Act 99-229) that affects real estate brokerage practices. Taken together, these new laws essentially do the following four things:

- (i) **Limit Subagency.** In cooperating sales, there is no longer the presumption that the broker working with the buyer is the subagent of the seller. The primary purpose of this change is to encourage buyer representation. Subagency is still allowed, but for each listing shown, the seller would have to approve the subagency relationship by signing a written consent to subagency.
- (ii) **Allow Dual Agency.** Provides for a dual agency consent forms to be used to obtain a buyer's and seller's (or landlord and tenant's) consent to dual agency. For in-house sales, where only one brokerage firm is involved, the brokerage firm can represent both the buyer and seller as a dual agent, provided that this consent is obtained. The forms provide guidance as to what type of disclosures cannot be made in a dual agency relationship.
- (iii) **Allow Designated Agency.** Real estate brokers are now allowed to appoint a separate seller agent and separate buyer agent for a dual agency transaction. The designated agents are not considered dual agents.
- (iv) **Protect confidential client information.** Requires preservation of confidential information at any time during or after an agency relationship. In order to provide guidance to licensees with regard to issues related to the new laws, the Commission establishes the following policies:

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OVERVIEW

1. Agency documents

Refer to Table 1 for an outline of agency documents required to be entered into with or given to buyers and sellers.

2. Agency in practice

Refer to Table 2 for an outline of issues to consider regarding the practical application of agency relationships.

3. Agency runs to the brokerage firm, not individual licensees.

In general, agency runs from a client to the broker in a brokerage firm and all salespersons in that brokerage firm. This means that if the brokerage firm has entered into a listing agreement with a seller, then all of the brokers and salespersons in that firm are agents of that seller, represent that seller, and owe fiduciary duties to that seller. Likewise, if the brokerage firm enters into a buyer agency agreement with a buyer, then all of the brokers and salespersons in that firm are the agents of the buyer, represent that buyer, and owe fiduciary duties to that buyer. Further, once a seller consents to a cooperating broker acting as a subagent, all licensees affiliated with that broker