



Pete Ricketts
Governor

EXHIBIT 15

STATE OF NEBRASKA

NEBRASKA REAL ESTATE COMMISSION
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TO: Nebraska Real Estate Commission
FROM: Greg Lemon, Director
RE: Use of Unlicensed Persons
DATE: May 16, 2019

At the March 21, 2019 meeting of the Nebraska Real Estate Commission, the Commission requested that research be done on the possible wording to Commission Policy and Interpretation on the Use of Unlicensed Persons, clarifying and expanding the allowable use of unlicensed persons as employees or third party service providers with regards to real estate services.

Current Commission laws and regulations are very restrictive on what an unlicensed person can and can't do, particularly as it relates to procuring prospects and referrals. "Broker means any person who ...**assists in procuring prospects or holds himself or herself out as a referral agent for the purpose of securing prospects for the listing, sale, purchase, exchange, renting, leasing, or optioning of any real estate.**" (Neb. Rev. Stat. §81-885.01(2)) The Commission interpretation has generally been that initial person to person contact, via phone, face to face, or other interactive media by unlicensed persons is not allowed for purposes of procuring prospects for clients or listings, or for referral purposes.

I. Proposed Changes to Commission Policy and Interpretation

Below are the proposed changes to the Commission interpretation based upon the motion and action taken at the last meeting.

"Commission Policy and Interpretation #31 31. 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 Nebraska Real Estate License Act prohibits unlicensed persons from negotiating, listing, or selling real property. 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 the License Act or Rules can be avoided.

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Licenses 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 licensees.
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 closings.
5. Secure documents, i.e. public information, from courthouse, sewer district, water district, etc.
6. Have keys made for company listings.
7. Write and prepare ads, flyers and promotional information 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 and remove 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
16. Measure property, if measurements are verified by the licensee.
17. Hand out objective written information on a listing, other than at functions such as open houses, kiosks, and home show booths or fairs.
18. Call or have other interactive communication with prospective clients or customers to solicit possible clients for the listing, sale, purchase, or lease of real property with a licensed real estate agent or firm, provided that such calls are limited to appointment setting only, and may not involve discussion of specific property characteristics, pricing, desirability, or client/customer motivation.
19. Return calls or requests asking to speak with an unspecified agent or firm in order to set up a meeting with a specific agent or firm.

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 on listings, title, financing, closing, etc.
4. Discuss or explain a contract, agreement, listing, or other real estate document with anyone outside the firm.
5. Be paid on the basis of real estate activity, such as a percentage of commission, or any amount based on listings, sales, etc.
6. Negotiate or agree to any commission, commission split or referral fee on behalf of a licensee.
7. Assist in procuring prospects for the listing, sale, purchase, exchange, renting, leasing, or optioning of any real estate, with the exception of those activities specifically listed in paragraphs 18 and 19 above.

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 employing 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.

This policy does not include unlicensed persons who are acting under the exemption related to management of property as set forth in 81-885.04(4).

Adopted February 12, 1992
Amended November 15, 2001”

Please note that the Commission also wanted to include in allowed activity by unlicensed persons to “promote a specific agency or firm” This seems to be implicit in the changes in both new #18 an #19 above, and would be redundant if added, so I left it out.

II. Statutory or Regulatory Changes Needed

Please note there are no specific regulations currently further defining the definition of brokerage activity found in §81-885.01(2), so based on the specific statutory language, “assisting in procuring prospects” seems to be very broad and if we allowed unlicensed persons to “Call or have other interactive communication with prospective clients or customers to solicit possible clients for the listing, sale, purchase or lease of real property with a licensed real estate agent or firm”, then it would be advisable to change the statute to eliminate or modify the assist in procuring language.

“19 Return calls or requests asking to speak with an unspecified agent or firm in order to set up a meeting with a specific agent or firm.” While this could be interpreted to be referral activity, if it was not done in conjunction with the unlicensed person or contractor “holding themselves out”

or advertising specifically as a referral agent for real estate services I think the allowed activity would fall within a reasonable interpretation of the statute.