

## UNREGISTERED ASSISTANTS

Like most industries, the real estate industry is continually evolving. The impact of larger franchise brokerages, the 100% commission concept, modern technology, rising costs, buyer agency (to mention a few), coupled with consumer demands for more professional and specialized services, has led some practitioners to engage “personal assistants”. Some personal assistants are registered while others are not, which raises the question as to what functions may be properly delegated to an unregistered assistant.

In considering the role of unregistered assistants, it is necessary to refer to The Real Estate Brokers Act:

*“transaction”, transaction in real estate” or “real estate transaction ” means*

*(a) the negotiation for another or others of any trade in real estate wherever situated, or*

*(b) any advertising by a broker, authorized official, or salesman, whether of real estate for sale or lease or for real estate to purchase or take on lease, or*

*(c) the showing of real estate for sale or lease to potential purchasers or tenants, or*

*(d) the collection by a broker, authorized official or salesman of rent, mortgage payments or instalments of purchase money payable under a lease, mortgage or agreement for sale of real estate, except real estate of which he is himself the owner, mortgagee or vendor, as the case may be, or*

*(e) the solicitation or obtaining of a listing agreement,*

*and includes any conduct, act or negotiation, directly or indirectly, in the furtherance or attempted furtherance of any one or more of the things mentioned in this clause;*

The definition of “transaction” comprises all activities remotely related to a transaction. The definition is so broad that a special provision is provided in clause 24(2)(a) to allow brokers to pay salaries to “office staff or persons engaged in clerical, accounting or caretaking duties” because their duties are indirectly related to the furtherance of real estate transactions. Without this exemption, it would be illegal for brokers to pay clerical and other staff, since subsection 40(2) requires persons receiving compensation for any act in respect of a transaction to be registered. Similarly, personal assistants who essentially perform clerical or accounting duties may not be required to be registered.

Real estate purchases and sales are complex transactions, requiring a certain level of skill. The Act requires applicants to take courses and pass pre-licensing examinations, and those aspects of a transaction that require special skill and knowledge of real estate must be conducted by a registrant. This criteria was taken into account into considering legitimate activities for unregistered assistants.

Here is a list of “Do’s” and “Don’t’s” for unregistered assistants that should, assist anyone who engages an unregistered assistant.

Unregistered Assistants must always describe themselves as an unregistered individual and identify the brokerage and agent they represent.

### An Unregistered Assistant May:

- Act as a receptionist and forward calls to a registrant.
- Submit listings and changes and enter information, both within the brokerage and to a Real Estate Board, provided the information is verified and approved by a registrant, and retrieve listing information for a registrant.
- Write, prepare and place or distribute ads, feature sheets, promotional material, flyers approved by a registrant.
- Distribute personal brochures or flyers for a registrant.
- Request documents (i.e., public information) from the courts and utility offices.
- Type contract forms for approval of a registrant.
- Act as a courier service to deliver documents and pick up keys provided there is no discussion concerning the contents of the documents or property with the person to whom the delivery is made.
- Witness signatures on listing agreements or buyer agent contracts prepared by a registrant.
- Schedule appointments for registrants with other agents, clients and customers.
- Have house keys made for a registrant.
- Set up and remove signs and lock boxes.
- Set up files, photograph properties, and complete fact sheets for a registrant's approval.
- Contact a financial institution to determine if a financing letter is available.
- Assemble documents for closing.
- Order items of routine repair for listed property when directed, to do so-by a registrant.
- Record and deposit trust money, rent, and security deposits.
- Compute and prepare commission cheques.

Note that many of the above functions are permissible if they are conducted under the purview of a registrant. The onus is on a registrant who engages an unregistered assistant to ensure that proper supervision is provided to the unregistered assistant to ensure accuracy of the information and to restrict the role of the unregistered assistant to permitted activity.

### An Unregistered Assistant May Not:

- Show properties that are for sale or lease.
- Answer inquiries from the public concerning listings, titles, financing, closings, or discuss or explain a contract, listing, property evaluation, lease agreement and/or other real estate documents with a member of the public.
- Negotiate sales contracts, listings, rental or lease agreements.
- Negotiate or agree to any commission, commission split, management fee or referral fee.
- Solicit listings or buyers, or property management contracts from prospective clients.
- Negotiate the amount of rent, security deposit or other lease provision.
- Hold publicly advertised Open Houses.
- Hold out or represent themselves as a registrant.
- Inspect or measure property.
- Have access to another person's property which is for sale or lease without the seller's and a registrant's specific permission.

The Manitoba Securities Commission is reminding all registrants that unregistered assistants may not engage in any activity that falls within the definition of "transaction" and for which a registration is required. Registrants are cautioned against allowing the scope of an unregistered assistant's duties to be expanded beyond those outlined above.

The Commission will investigate all complaints which allege that an unregistered assistant engaged in a registerable activity and, where the evidence obtained in an investigation revealed that an unregistered assistant engaged in registerable activity, the Commission would take action against the unregistered assistant and the registrant(s) for whom the unregistered assistant was acting.