

Short Title: Unlicensed Assistants

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STATEMENT OF PURPOSE AND SCOPE

In looking at the issue of unlicensed assistants, various aspects must be considered, including what activities the individual will perform and how the individual is paid.

Definitions

“Unlicensed Assistant” is an unlicensed individual hired by an Arizona licensed real estate broker or salesperson as an assistant, who is not engaging in any activity for which a real estate license is required.

“Compensation” means any fee, commission, salary, money or other valuable consideration for services rendered or to be rendered as well as the promise of consideration whether contingent or not (A.R.S. § 32-2101(16)).

An unlicensed assistant cannot be compensated on any basis that relies on the ultimate sale or closing of a property. The employing broker or designated broker is responsible for addressing in its written policies and procedures who is responsible for hiring and compensating unlicensed assistants. The employing broker is responsible for all activities of licensed individuals within the brokerage pursuant to Arizona Revised Statutes and Rule.

All inclusions of the unlicensed assistant in advertising or marketing must indicate the individual as being “unlicensed” (A.R.S. § 32-2165(A)).

An unlicensed assistant may:

- Under the direct supervision of an Arizona licensee, perform the following tasks, which include, but are not limited to:
 - Personal errands for the licensee
 - Clerical/administrative tasks including filing, copying, mailing, scanning, answering phones, forwarding calls or transcribing callers' information for licensee
 - Using technology as a tool to complete tasks assigned by a licensee, which are not activities otherwise requiring a real estate license
 - Preparing marketing materials approved by the Designated Broker
 - Delivering documents
 - Assist at an open house with a licensee present
 - Set or confirm appointments for:
 - A licensee to list or show property
 - A buyer with a loan officer
 - A property inspector to inspect a home

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- A repair/maintenance person to perform repairs/maintenance
- An appraiser to appraise property
- o Transmitting only instructions or information to clients, contractors, inspectors, appraisers and maintenance/repair people as completed and dictated by a licensee.
- o Unlocking a home for a licensee so that the licensee can show a client the property or preview the property (No discussion about the property).
- o A person who works for a real estate broker or a real estate salesperson may collect in-person rent and related fees on behalf of the real estate broker or real estate salesperson for the use of real estate as part of the person's clerical duties and who provides a receipt when rent is paid.

An unlicensed assistant *shall not* perform the following activities:

- o Originate documents
- o Perform a walk-through inspection or Tenant Vacate Inspection
- o Provide advice, pricing, or opinions of value to a consumer
- o Provide advice or negotiate with anyone regarding a property or transaction
- o Assist in the preparation of documents **with** a consumer
- o Hold/host an open house without a licensee being present
- o Assist or direct in the procuring of prospects calculated to result in the sale, exchange, leasing or renting of real estate pursuant to A.R.S. 32-2101(50)(i) unless exempt under A.R.S. 32-2121(A)(10). **Be advised that the exemption in A.R.S. 32-2121(A)(10) is very fact specific and limited in scope.**
- o Attend closing with a consumer without a licensee being present

An unlicensed assistant *may* transfer monies or be a signatory on a property management trust account only when the unlicensed assistant:

- o Is in the direct employ of the broker, and
- o Is a bona fide officer, member, principal or employee of the property management firm pursuant to A.R.S. § 32-2174(C) and employing broker pursuant to A.R.S. § 32-2101(24).

An unlicensed assistant is otherwise *not* permitted to withdraw monies from the broker's trust account.

Pursuant to A.R.S. 32-2165(B) A person who performs acts that require a license under this chapter, other than a broker's or salesperson's license, without being licensed as prescribed by this chapter is guilty of a class 5 felony.

Employee Classification and Compensation:

For additional information on ensuring proper classification of employees as 1099 Independent Contractors or W-2 Employees, visit the Internal Revenue Service, a Bureau of the United States Treasury at [irs.gov](https://www.irs.gov) or [here](#).

For additional information on ensuring proper wages and compensation for employees and other labor-related requirements, visit the United States Department of Labor at [dol.gov](https://www.dol.gov) or [here](#).

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Authority: A.R.S. § 32-2101(50) defines the activities of a real estate broker for which licensure is required pursuant to A.R.S. §§ 32-2122, 32-2121, 32-2151.01(B), 32-2174(C). See also A.A.C. R4-28-1103.

Policy Program: Enforcement

Effective Date: Revised April 3, 2000; Revised & Renumbered 5/28/2004; Renumbered 4/01/2005; Revised & Renumbered 6/9/2017; Revised 9/29/2021; Revised on September 28, 2022 to reflect Amendments made in Ariz. Laws Ch. 298 § 1 (2022).

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