

STATE OF NEW HAMPSHIRE
REAL ESTATE COMMISSION

**DECLARATORY RULING ON WHETHER NON-RESIDENT, THIRD-PARTY
COMPANIES CAN SOLICIT AND BOOK LISTINGS FOR A LICENSEE**

Pursuant to Rea 201.08(a), Terry Lajoie, petitioned the New Hampshire Real Estate Commission (“Commission”) for a declaratory ruling that clarifies whether an unlicensed, third-party company from outside of New Hampshire can solicit and book real estate listings on behalf of an agent. The Commission finds that such a solicitation for compensation is not allowed if the company is performing activities that are outside the scope of those that can be performed by an unlicensed assistant.

Unless otherwise exempt, any person acting as a broker must have a license. *See* RSA 331-A:3. The definition of “broker” extends to “any person acting for another on commission” when conducting certain activities. RSA 331-A:2, III. The activities include assisting with or directing “the procuring of prospects” or engaging in “the business of charging an advance fee in connection with any contract whereby the person undertakes to promote the sale or lease of real estate.” RSA 331-A:2, III (h) & (j). Further, a broker is one who is “acting for another” and is doing so “for compensation.” *See Skynet v. Slattery*, 2008 DNH 072, at 8 (D.N.H. Mar. 31, 2008) (noting the meaning of “broker” requires activities listed in RSA 331-A:2, III be done while “acting for another” and “for compensation”).

In her petition, Ms. Lajoie provides an example of a service offered by a third-party company. The service offered to “contact the leads, engage them and verify they are ready to work with a Realtor” in addition to “set[ting] all the appointments.” It is unclear whether this specific conduct requires licensure or whether this is permissible unlicensed assistant work. The ambiguity comes from the use of the word “lead” in their advertisements. Additional information is needed regarding the source of the leads to be contacted and the nature of the contact to assess whether the service constitutes assisting in the “procuring of prospects” or another aspect of brokering, thereby requiring a license. Should their services be limited to those below for unlicensed assistants, the Commission would deem the service permissible without a license.

Real estate brokers may have unlicensed assistants, but these assistants have limited roles. Previously the Commission has issued a guideline document outlining roles for unlicensed assistants and continue to find such activities permissible for unlicensed assistants. These roles can include: giving general information about listed properties, ushering changes to MLS databases, delivering paperwork, and scheduling appointments for licensee to show a listed property. As far as a general rules for whether an unlicensed assistants can handle a task for the agent, the Commission offers “that an unlicensed assistant should have very little contact with

the buyer or seller beyond providing secretarial assistance or factual information on listings.” Solicitation is explicitly mentioned as not a task for unlicensed assistants.

With regard to the fact that the company is out of state, RSA 331-A:22 notes that nonresident requirements apply only to license applicants, therefore not unlicensed assistants to licensees. RSA 331-A:22, III. Further, since the statutory scheme allows for a nonresident to become a broker, the ability for a nonresident to be an unlicensed assistant is also permissible.

Conclusion:

RSA 331-A requires solicitation and other broker tasks to be handled only by licensed individuals. Unlicensed assistants can perform clerical duties, but these cannot include solicitation. Both licensed individuals and unlicensed assistants can be non-residents of New Hampshire.

BY ORDER OF THE COMMISSION

Dated: June 19, 2018



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Commission