

STATE OF NEW HAMPSHIRE  
REAL ESTATE COMMISSION

**DECLARATORY RULING ON THE APPLICABILITY OF RSA 331-A:26, XXIV AND  
UNLICENSED BUSINESS ENTITIES**

Pursuant to Rea 201.08(a), Berkshire Hathaway HomeServices – Verani Realty, petitioned the New Hampshire Real Estate Commission (the “Commission”) for a declaratory ruling that clarifies whether RSA 331-A:26, XXIV prohibits a licensed broker from paying a commission to a real estate broker that has formed a limited liability company (LLC), but has not obtained a license for the LLC. The Commission agrees that such a payment is prohibited.

Real Estate brokers are required to be licensed pursuant to RSA 331-A:3. Either an individual or entity, such as a corporation or LLC, may seek a broker license. RSA 331-A:2, III and VII. In addition, an individual broker or “firm broker” may register a trade name with the Commission. RSA 331-A:17, II. When a firm is licensed, “all members and officers of a corporation, partnership or association, who actively participate in the business of real estate brokerage, shall possess an active broker's or salesperson's license.” RSA 331-A:16, III.

Real Estate brokers are limited to paying commissions to licensees. Specifically, RSA 331-A:26, XXIV prohibits, in relevant part:

Paying or offering to pay valuable consideration, as defined by the commission, to any person not licensed under this chapter, except that valuable consideration may be shared with a licensed broker of another jurisdiction who is doing business regularly and legally within that broker's own jurisdiction. No licensee shall knowingly pay a commission or other valuable consideration to a licensed person knowing that the licensee will in turn pay a portion or all of that which is received to a person who does not hold a valid real estate license.

Thus, an individual may choose to be licensed as an individual broker and receive commissions in his or her individual name. The individual may be licensed as an individual broker, properly register a trade name, and can receive commissions as the registered trade name. Last, an individual can form an entity, such as a LLC. In that situation, the individual must be licensed, and if the LLC will be receiving commission payments, the LLC must also be licensed. There is no ability for a salesperson to register a trade name or be licensed as an entity.

**Conclusion**

RSA 331-A:26, XXIV prohibits paying commission to unlicensed entities.

BY ORDER OF THE COMMISSION

Dated: June 19, 2018

A handwritten signature in blue ink, appearing to read "Rick Wisler". The signature is fluid and cursive, with a large loop at the end.

Rick A. Wisler, Administrator III  
Division of Technical Professions  
NH Office of Professional Licensure and Certification  
Authorized Representative of the NH Real Estate  
Commission