



LEGAL UPDATE

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A MONTHLY GUIDE TO WISCONSIN REAL ESTATE LAW & POLICY

Personal Assistant Rules & Forms

Many real estate practitioners have found that working with a personal assistant gives them the ability to devote time to tasks that help them make more money, such as selling and prospecting, while knowing that the day-to-day business tasks are being handled professionally by someone else. The 2015 National Association of REALTORS® Member Profile revealed the following with regard to REALTORS®' utilization of personal assistants:

- 18 percent of REALTORS® use at least one personal assistant (was down to 16 percent for 2016).
- 2 percent of REALTORS® use two or more assistants.
- 46 percent of personal assistants are licensed.
- 57 percent of personal assistants are employed part-time.
- 64 percent of personal assistants work exclusively for one REALTOR®.

① MORE INFORMATION

See the video and summary of the 2015 National Association of REALTORS® Member Profile at www.realtor.org/news-releases/2015/06/nar-member-survey-reveals-slight-dip-in-realtor-business-in-2014.

When it comes to personal assistants in Wisconsin, some of them are licensed and some are not. While often equally helpful, unlicensed personal assistants are legally limited as to the duties they may provide. Generally, an unlicensed assistant may only perform clerical and administrative duties and cannot provide services that generally require a license, such as hosting an open house, showing property, or drafting or explaining a contract.

Some personal assistants are independent contractors and some are employees. Generally, an assistant will be considered an employee if the party who engaged the assistant retains the right to control what the assistant does and how it is done. Since the need for an assistant derives from an agent's need for assistance with a heavy workload the agent may want to retain a significant amount of control over the

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assistant's actions. Because of the nature of the job to be performed, it's most likely an unlicensed assistant will be treated as an employee.

If an assistant is an employee, then either the agent or the firm that hired the assistant will be the employer responsible for the same tax withholding as for other employees: federal income tax, FICA (Social Security and Medicare), FUTA (federal unemployment compensation), state income tax, and any other applicable taxes or payments. If the assistant is hired as an independent contractor, the assistant is responsible for his or her tax obligations. But there is more to consider regarding personal assistants than just tax issues.

Other personal assistants are valued because they can actually do many of the same tasks that an agent can do. In other words, these are licensed personal assistants who hold real estate licenses and who can assist the agents by performing various brokerage services. Licensed personal assistants are licensees associated with the firm who can work in the same way as other licensees, subject to the limitations imposed contractually under the agreement they have with the firm

and any licensees they are assigned to work with. Licensed personal assistants, like other licensees, often are independent contractors but can be employees as well.

Personal Assistant Terminology and Basics

On March 2, 2016, the Wis. Stat. Chap. 452 Modernization Act was signed into law. This legislation substantially alters Wisconsin Statute Chapter 452 including terminology. Wis. Stat. Chap. 452 now includes a definition of “unlicensed personal assistant,” although it still does not define “personal assistants” or “licensed personal assistants.” This legislation impacts the language used in personal assistant conversations in this and other ways.

The prior terminology of “employment,” “employer,” and “employee” that had been used in reference to independent contractor relationships as well for traditional employment situations has been eliminated. That lingo had always seemed artificial and strained, so it is a relief to no longer refer to independent contractors as employees.

Wis. Stat. § 452.01(1o)

“Associated with a firm” means to have been engaged by a firm to provide brokerage services to the firm’s clients and customers on behalf of the firm and under the firm’s supervision, including as an employee of the firm or as an independent contractor, or both.

Wis. Stat. § 452.01(4w)

“Firm” means a licensed individual broker acting as a sole proprietorship or a licensed broker business entity.

Under the new terminology in Wis. Stat. Chap. 452, an agent or licensee can become associated with a firm. A firm may engage the licensee to provide brokerage services as either a traditional employee or as an independent contractor. A licensed personal assistant would be associated with a firm, but an unlicensed assistant would not because the unlicensed assistant does not provide brokerages services. So now if the word “employ” is used, it signifies employment as commonly understood by most people.

Wis. Stat. § 452.34 Unlicensed personal assistants

(1) In this subsection, “unlicensed personal assistant” means an individual, including an individual who is licensed under this chapter, who is employed only to provide services for which a license is not required under this chapter as provided in s. 452.03 (2).

Wis. Stat. § 452.03(2)

No license under this chapter is required for an individual who, on behalf of and under the direction of a firm or one or more licensees associated with a firm, provides the firm or licensee with services that are limited to those that are purely administrative, clerical, or personal in nature.

The newly created Wis. Stat. § 452.34 is inspired by, and in large

part codifies what used to appear in Wis. Admin. Code § REEB 17.12, and thus the definition of “unlicensed personal assistant” now appears in the statutes and no longer is included in the administrative code. § REEB 17.12 has been deleted by the emergency rules in effect July 1, 2016 – November 27, 2016. It is expected that the emergency rules will become permanent in 2017.

① MORE INFORMATION

The emergency rules may be viewed at docs.legis.wisconsin.gov/code/emergency_rules/all/emr1620.

Wis. Stat. § 452.03(2) is new and explains what types of services an individual without a license may provide to a firm or to a licensee associated with a firm. Thus, under Wis. Stat. §§ 452.34(1) and 452.03(2), an unlicensed personal assistant is employed – not engaged as an independent contractor – to provide purely administrative, clerical, or personal services to the firm or an agent of the firm.

A “licensed personal assistant,” on the other hand, may perform activities that require a real estate license. The licensed personal assistant, accordingly, must have a real estate license and must be associated with a firm if the assistant is to perform licensed activities on behalf of the firm. A licensed personal assistant may do anything a salesperson may do, subject to any contractual restrictions and limitations imposed by the firm.

Personal assistant employment classifications

Real estate agents, personal assistants and office support staff generally will be classified as employees or independent contractors based upon their authority to act independently and compliance with classification standards found in statutes, the common law and applicable tax codes. The relationship between the firm and the licensees associated with the firm can be either an independent contractor relationship or an employer/employee relationship. Independent contractors, in turn, can be either common-law independent contractors, statutory independent contractors or independent contractors under the new Wis. Stat. § 452.38.

The determination of whether an individual is an employee or independent contractor is important for several reasons. Federal and state income tax is generally withheld from wages paid to employees, but not from compensation paid to independent contractors. The employee/independent contractor status also determines Social Security and Medicare payments, federal and Wisconsin unemployment compensation, Wisconsin worker’s compensation, tax on self-employment income, and the deductibility of business expenses.

Employee versus independent contractor

Employees are individuals who perform services subject to the will and control of an employer who has the legal right to control both the method used and results of the services performed. In Wisconsin, only a very few licensed agents are employees. Secretarial staff, receptionists and unlicensed personal assistants, on the other hand, generally are employees. Employment contracts are not necessary for employees such as office staff, but some firms may have such contracts.

An individual may be an independent contractor if the company has

the right to control or direct only the result of the work and not the means and methods of accomplishing the result. Independent contractor status may be established under the tests created under the common law, the federal tax code or the new Wis. Stat. § 452.38.

MORE INFORMATION

See the detailed discussion of the employee versus independent contractor dichotomy on pages 1- 4 of the May 2016 *Legal Update*, “Firm Management Under the 2016 Modernization Act,” at www.wra.org/LU1605.

When applying the independent contractor tests under the federal tax code or § 452.38, there are three primary criteria to be met:

1. The person has a real estate license.
2. The licensee performs services under a written contract providing that the licensee will not be treated as an employee for federal tax purposes.
3. Substantially all payments for their services as real estate agents are directly related to sales or other output, rather than to the number of hours worked; or 75 percent or more of commission related to sales or output and paid by the firm to the licensee during a calendar year is directly related to the brokerage services performed by the licensee on behalf of the firm.

When applying these tests to a licensed personal assistant, the licensed personal assistant will have a real estate license, by definition, and may have an agreement that states that the personal assistant is not an employee for federal and state tax purposes. The deciding factor will often be whether the licensed personal assistant is paid by commission or success fee, or whether the assistant is paid wages or a salary. The personal assistant’s compensation must be substantially all, or at least 75 percent, commission or success fees if the assistant is to qualify as an independent contractor under the independent contractor tests, either under the federal tax code or under Wis. Stat. § 452.38, respectively.

The common-law test will be applied if there is no written independent contractor agreement, if the licensed personal assistant is not paid by commission/success fee, or if the licensed personal assistant does not otherwise qualify as an independent contractor under the statutory tests. The independent contractor tests will not apply to unlicensed personal assistants because they perform administrative services not requiring a license.

REALTOR® Practice Tip

If the licensed personal assistant meets any of the independent contractor tests, then the licensed personal assistant may be treated for all intents and purposes as an independent contractor. In the case of a licensed personal assistant not providing brokerage services, the assistant may not be an independent contractor under the above criteria. If a licensee is not providing brokerage services, then the licensee may be an unlicensed personal assistant, regardless of whether that person holds a license.

Who can engage a personal assistant?

Under the emergency rules in effect July 1, 2016 – November 27, 2016, all that remains is under Wis. Admin. Code Chapter REEB 17 regarding the licensure and supervision of employees is § REEB 17.03. The rest of Chapter REEB has been shifted to Chapter 452 of the statutes. It is expected that the emergency rules will become permanent in 2017.

Wis. Admin. Code § REEB 17.03 Limitations on licensees associated with a firm.

- (2) A licensee associated with a firm may personally employ or engage as an independent contractor licensed persons only as unlicensed personal assistants within the meaning of s.452.34(1), Stats., subject to the provisions in s. 452.34, Stats.
- (3) A broker shall be associated with only one firm unless the broker is engaging in independent practice under s. 452.30(6) (a) or acting as business representative for a licensed business entity under s. 452.12(2)(a).
- (4) A salesperson may engage in real estate practice only when associated with a firm.

Wis. Admin. Code § REEB 17.03 is relevant to the discussion of personal assistants because it indicates that a licensee associated with a firm may personally engage a person who holds a real estate license as an independent contractor only if the person will be an unlicensed personal assistant. In other words, a licensed personal assistant can be engaged only by a firm whereas an unlicensed personal assistant may be engaged by a firm or by a licensee associated with a firm.

REALTOR® Practice Tip

An agent or a firm may hire an unlicensed personal assistant but only a firm may engage a licensed personal assistant.

Unlicensed Personal Assistants

Unlicensed assistants are legally limited as to the duties they may provide. Generally, an unlicensed assistant may only perform administrative, clerical and personal duties and cannot provide services that require a license, such as hosting an open house, showing property, negotiating an offer, explaining a contract, or agreeing to any commission, commission split, management fee or referral fee on behalf of a firm or another licensee.

Codifying unlicensed personal assistants rules

The content of the newly created Wis. Stat. § 452.34 should be familiar to licensees because it repeats what used to appear in Wis. Admin. Code § REEB 17.12.

452.34 Unlicensed personal assistants.

(1) In this subsection, “unlicensed personal assistant” means an individual, including an individual who is licensed under this chapter, who is employed only to provide services for which a license is not required under this chapter as provided in s. 452.03 (2).

(2) A licensee associated with a firm, prior to retaining an individual to serve as an unlicensed personal assistant, shall enter into a written agreement with the licensee's firm, setting forth the duties of the unlicensed personal assistant, the manner in which the unlicensed personal assistant will be compensated for his or her services, and the responsibilities of the licensee and the firm with respect to supervision of the unlicensed personal assistant's activities.

(3)

(a) In this subsection, “open house” means a showing of real estate open to the public for viewing without an individual appointment.

(b) An unlicensed personal assistant may not assist a licensee at an open house for the sale of real estate or a business without the direct, on-premises supervision and presence of a licensee, and may not provide any services at an open house for which a license is required under this chapter.

There were no substantive changes for unlicensed personal assistants, but now the rules are more squarely in force as part of the statutes.

The new Wis. Stat. § 452.34:

1. Formally recognizes the practice of licensees associated with firms in employing individuals to assist them in carrying out their responsibilities for their firms.
2. Assures that firms are informed when the licensees associated with the firms have hired personal assistants.
3. Protects the interests of the licensees, personal assistants, and the public by requiring that the duties of the unlicensed personal assistant, the manner in which the personal assistant will be compensated for his or her services, and the responsibilities between the licensee and firm for supervision of the personal assistant's activities, are all set forth in writing.

Open house rule

The statute also prohibits unlicensed personal assistants from conducting an open house for the sale of real estate or a business without being accompanied by a real estate licensee as it is deemed nearly impossible for an individual to conduct an open house without engaging in negotiations with a prospective purchaser. An unlicensed personal assistant can only provide assistance at an open house if directly supervised by a licensee who is on the premises. Even if supervised by a licensee, the unlicensed personal assistant can only engage in nonlicensed activities.

This rule was created because visitors at an open house typically will expect the host or hostess to provide information and other services that would require a real estate license. It is not reasonable to expect unlicensed hosts to silently sit on the couch as the public tours the

premises. If they are allowed to provide information, there will always be the risk that they might unintentionally cross the dividing line into the world of negotiations. The human inclination to keep on answering questions and try to be as helpful as possible is so great that the best judgment is to not allow unlicensed assistants to conduct open houses without a licensee present to handle any negotiations that may arise. Unlicensed individuals should not be placed in the vulnerable position of being tempted to engage in conversations that end up being negotiations.

Negotiations begin when the discussions with the person exit the “providing information” phase and enter the offer or proposal development phase. Negotiations begin when the conversation shifts from market or property information to contract terms; when the conversation focuses on altering or changing what is included with the property; or there are other give-and-take discussions. Negotiations may or may not begin during a showing, depending upon what is discussed. The same can be assumed to be true for an open house, again depending upon the specific circumstances.

Unlicensed personal assistant services

Any time a firm or an agent engages an unlicensed personal assistant, one focus will be to ensure that the assistant only provides services for which a real estate license is not required. Should the assistant cross the line and provided licensed brokerage services, then the individual is providing real estate brokerage services without a license, and the agent or firm responsible to supervise the assistant may also be in hot water. It may be prudent to provide close supervision and instruction to assure an unlicensed assistant does not engage in any activity constituting real estate practice that would require a real estate license. Any activity considered to be “negotiation” must be avoided.

Although the definition in the statutes is detailed, there still may be no clear-cut line as to when negotiation occurs in some situations. Accordingly, use of unlicensed personal assistants should be evaluated as a matter of business risk. The agent and the firm may be liable for errors or misstatements made by unlicensed assistants, and this liability may not be covered by a standard errors and omissions insurance policy.



REALTOR® Practice Tips

Firms and agents working with unlicensed personal assistants should find out what coverages are and are not available under the firm's errors and omissions insurance and determine what, if any, additional coverages may be available. A conversation with the insurance agent is prudent.

It may be wise to have operational policies, standards and rules for unlicensed personal assistant activities to try to confine their services to administrative, clerical or personal areas and away from negotiation and brokerage services. One effective way of doing this is with a written agreement.

Agents may find it beneficial to hire unlicensed assistants to perform functions incidental to the agent's typical practice, for example telemarketing. In each case, great care should be exercised to ensure that the assistant does not engage in any activity that might be construed as negotiation. An agent would be well advised to provide written procedures for the assistant to follow when answering inquiries from

the public regarding listings. As a general rule, the nonlicensee can give factual information that is normally found on an MLS data sheet or an advertisement. Questions or requests that go beyond such information should be referred to the agent. When using unlicensed assistants as “telemarketers,” it is wise to provide the nonlicensee a script to follow and closely monitor the assistant's activities. The assistant may call on behalf of the agent and, if the consumer is interested in the agent's services, the assistant may schedule an appointment between the consumer and the agent.

An unlicensed personal assistant may be permitted to prepare and send advertisements to the media in accordance with the policies and procedures of the firm. The unlicensed assistant's immediate supervisor and the firm would be accountable for any ads that do not comply with statutes and rules. In addition, an unlicensed personal assistant may perform the secretarial function of typing a document under the direction of a licensee. It is important to note that the licensee's name will be on the form, showing that he or she negotiated it and is responsible for its contents. The act of physically filling in or typing up a real estate contract that sets forth the terms and items directed by a licensee is a secretarial task and does not require a real estate license. This is similar to a secretary who types contracts or legal briefs in a law firm.

Practice guidelines for unlicensed personal assistants

An unlicensed personal assistant, on behalf of and under the direction of a licensee, generally may engage in the following administrative, clerical, or personal activities without being in violation of licensing requirements. The following list is intended to be illustrative and should be evaluated based upon the particulars of a given situation or task. An unlicensed personal assistant of a licensee may:

1. Answer the telephone, take messages and forward calls to a licensee.
2. Submit listings and changes to multiple listing services.
3. Follow up on a transaction after a contract has been signed.
4. Assemble documents for a closing.
5. Gather public information from a government office, title company, MLS, lender, appraiser, sewer district, water district, website or other repository of public information.
6. Have keys made for a company listing.
7. Draft advertising copy and promotional materials for approval by a licensee.
8. Place advertising.
9. Record and deposit earnest money security deposits and rents.
10. At the direction and with the approval of a licensee, enter information that a licensee has approved into a contractual form.
11. Monitor licenses and personnel files.
12. Compute commission checks and perform bookkeeping activities.
13. Place and remove signs on property.
14. Order items of routine repair as directed by a licensee.
15. Prepare and distribute fliers and promotional information under the direction of and approval by a licensee.
16. Act as a courier to deliver documents or pick up keys.

17. Place routine telephone calls on late rent payments.
18. Schedule appointments for the licensee.
19. Respond to questions by quoting directly from published information.
20. Gather feedback on showings.
21. Perform other administrative, clerical, and personal activities for which a license is not required.

Also see the table of Client-Customer Outreach Tasks on page 17 of this *Update* for other services that may be acceptable as a personal assistant



REALTOR® Practice Tip

Any licensee and firm drafting an agreement to hire an unlicensed personal assistant should carefully evaluate what tasks that assistant will be expected to perform. Consultation with legal counsel is prudent with regard to the pros and cons of specific lists of tasks versus general descriptions of the assistant's role within the agreement.



Compensation of unlicensed personal assistants

Wis. Stat. § 452.19 prohibits the paying of commissions, finder's fees, and referral fees to unlicensed persons. This prohibition operates to generally prohibit the payment of commissions or success fees to unlicensed personal assistants. Accordingly, unlicensed personal assistants are often paid an hourly wage or a salary. The payment of an hourly wage or a salary for the assistant's secretarial and administrative services does not constitute unlawful "fee-splitting" with unlicensed persons. As long as the unlicensed assistant's employment remuneration is not based upon "success" — such as commission or fee paid per each successful "lead" obtained — Wis. Stat. § 452.19 is not violated.

However, if an individual working as an unlicensed personal assistant did hold a current salesperson's license and that individual made a referral, that individual could be paid a referral fee directly. Wis. Stat. § 452.19 permits a broker to pay referral fees and finder's fees to other Wisconsin licensees as long as that person's license is active and regardless of the fact that the person holds a salesperson's license, rather than a broker's license. The fact that the person is not currently associated with a firm is not relevant. The individual with a current salesperson's license who is not working as a licensed real estate agent and who does not have his or her license associated with a firm can make a referral and receive a fee. Thus an unlicensed personal assistant who does hold a current salesperson's license may be paid referral and finder's fees.

Many agents would prefer the firm to take on the administrative burdens involved in engaging and paying an unlicensed personal assistant. If the firm is willing and the agent prefers, the agreement between the firm and the agent might indicate that the firm agrees to act as the payroll service for the agent in exchange for an administrative fee to cover the costs involved. This practice is less common now than in past years. One problem with this approach is that the firm may be held to be the employer of the personal assistant, thus entitling the personal assistant to the benefits other company employees are entitled to. It may be beneficial for agents to instead consult with private tax and employment professionals and/or hire a private payroll service.

Withholding requirements of employers

If a personal assistant is an independent contractor, there is not any form of federal and state tax withholding. Instead an annual 1099 form showing all monies paid to the assistant must be prepared and copies must be filed with the IRS and provided to the assistant. The independent contractor is responsible for all tax obligations. This is, however, a bit unusual for an unlicensed personal assistant.

In the majority of cases an unlicensed personal assistant is an employee while the employer may be the firm or the agent with whom the unlicensed personal assistant will work. The employer is responsible for withholding income taxes and the employee's share of FICA — Social Security payments and Medicare contributions — from all wages, bonuses, and compensation paid. The employer alone is responsible for paying federal unemployment tax (FUTA); the employee makes no contribution. In addition state income tax and state unemployment compensation will need to be addressed.

An unlicensed personal assistant who is an employee may be asked to complete Internal Revenue Service Form W-4, downloadable from the IRS Forms and Publications page at www.irs.gov/forms-pubs. This

information is used to calculate how much money should be withheld. There are withholding tables in the IRS Circular E, Employer's Tax Guide at www.irs.gov/publications/p15/index.html.

For 2016, the social security tax rate of 6.2 percent is used to determine the amount withheld for the employer and for the employee, for 12.4 percent total tax rate. The Medicare tax rate is 1.45 percent for each the employee and employer, for a 2.9 percent total tax rate.

For 2016, the federal unemployment (FUTA) tax rate is 6.0 percent. The tax applies to the first \$7,000 paid to each employee as wages during the year. The \$7,000 is the federal wage base. Generally, the employer can take a credit against your FUTA tax for amounts you paid into state unemployment funds. The credit may be as much as 5.4 percent of FUTA taxable wages. See the Instructions for Form 940 for further guidance.

The employer must deposit the amounts withheld for the assistant's and the employer's contributions in a designated bank account on a regular schedule, usually monthly. The IRS supplies Federal Tax Deposit coupons, showing the Employer Identification Number, to make deposits. States also may require regular deposits of state income tax payments that were withheld.

① MORE INFORMATION

This is only a general overall summary of the payroll responsibilities of an employer. For more information on employer tax responsibilities, confer with an accountant or tax attorney, or visit the Internal Revenue Service Guide to Employment Taxes for Businesses at www.irs.gov/businesses.

If all this sounds too overwhelming, there are some options for agents or firms who hire unlicensed personal assistants. The best choice may be to outsource this activity to an accountant or a company that provides payroll services. Another option is to hire an assistant through a temporary personnel agency; then it becomes the agency's responsibility to handle payroll and withholding. If the agent is the employer, the firm also might handle the paperwork, accounting and payroll functions for a fee although this practice is less prevalent than it used to be.

Unlicensed Personal Assistant Agreement Form

The WRA Unlicensed Personal Assistant Agreement has been updated to comply with recent legislation and changes to the administrative rules. It no longer provides a table checklist of duties a personal assistant might perform and instead leaves any itemization of tasks to the parties completing the agreement. The agreement gives the firm information regarding the tasks the unlicensed assistant will be performing for the agent. This provides the firm with an opportunity to revise the scope of the assistant's services, if concerned. The description of the assistant's services also provides a defense of sorts if the unlicensed assistant engages in inappropriate activities. The agreement also provides an opportunity for the firm and agent to discuss and determine responsibility for the unlicensed personal assistant's compensation.

Written agreement required for unlicensed assistants

Wis. Stat. § 452.34(2) provides that “A licensee associated with a firm, prior to retaining an individual to serve as an unlicensed personal assistant, shall enter into a written agreement with the licensee’s firm, setting forth the duties of the unlicensed personal assistant, the manner in which the unlicensed personal assistant will be compensated for his or her services, and the responsibilities of the licensee and the firm with respect to supervision of the unlicensed personal assistant’s activities.”

Under Wis. Stat. § 452.34(2), agents who wish to hire an unlicensed personal assistant must enter into a formal agreement with the firm the agent is associated with. The firm and the agent each may have some responsibility for the unlicensed personal assistant’s actions, depending upon the circumstances. In any event, the public is at some risk if the unlicensed personal assistant’s activities are not properly supervised. Accordingly § 452.34(2) requires licensees associated with a firm who hire unlicensed personal assistants to enter into an agreement with the firm that indicates: (1) that the unlicensed personal assistant has been hired, (2) the duties the personal assistant will perform, (3) how the personal assistant is going to be compensated, and (4) how the personal assistant is going to be supervised.

Updated WRA Unlicensed Personal Assistant Agreement

A draft copy of the 2016 version of the WRA Unlicensed Personal Assistant Agreement (UPAA) appears on pages 15-16 of this *Update*. It is expected the agreement will be available in zipForm in November 2016. The following discussion walks through the revised UPAA and overviews the provisions.

Lines 1-7: Terminology and parties

The UPAA adopts the new terminology of the Chapter 452 Modernization Act and refers to what had been typically referred to as the brokerage company or employing broker as the firm. Wis. Stat. § 452.01(4w) defines a firm as “a licensed individual broker acting as a sole proprietorship or a licensed broker business entity.” Therefore the term “firm” refers to the licensed business entity or the sole proprietor broker who has engaged licensees to perform real estate services. Instead of referring to a sales agent or an agent, the beginning of the revised UPAA refers to the “licensee” who has been engaged by the firm and who will be working with the unlicensed personal assistant. The revised UPAA acknowledges that the licensee engaged by the firm may be an individual who holds a broker’s license or a salesperson’s license or a licensed business entity. Once the licensee has been identified, the balance of the form refers to the licensee as “agent” for ease of use. The UPAA also identifies the unlicensed personal assistant, referred to in the UPAA as the “assistant”.

Lines 8-18: Role and status of assistant

Lines 8-9 first establish that the agent is providing real estate services for the firm and the next section on lines 10-12 establishes that the assistant will provide services of an administrative, clerical or personal nature for which a real estate license is not required. The box at line 13 may be checked if the assistant is an employee of the firm while the box on line 15 is checked if the assistant is the employee of the agent. In either case the language indicates that the assistant will assist the

agent. The UPAA may need to be modified if this is not the case. These sections establish that the firm and the agent have an independent contractor relationship, while the assistant is an employee.

Lines 19-25: Legal and ethical compliance

The firm and the agent agree to comply with all applicable laws and the Code of Ethics, to practice competently, and to maintain real estate licenses and REALTOR® memberships. The assistant agrees to provide services in accordance with applicable law and the Code of Ethics. Even though the assistant is not a license or a REALTOR®, an assistant acting on behalf of the firm should be expected to act in accordance with these principles when representing the firm.

Line 26: Tax status as employee

This line states the assistant is an employee.

Lines 27-35: Compensation

This section offers check box items depending upon whether the assistant is an employee of the firm or of the agent. In either event, the details of the compensation are to be delineated in a compensation exhibit that will be attached to the UPAA. The box at line 34 may be checked if the agent is reimbursing the firm for the assistant’s compensation and/or if firm is providing payroll or bookkeeping services for the agent. The details of such arrangements may be stated in an attached reimbursement exhibit.

Lines 36-46: Supervision

This section places primary responsibility for monitoring the assistant’s activities on the agent although both the firm and the agent may have some responsibility.

The agent is held responsible for all actions taken by the assistant while under the supervision or direction of the agent. The agent is also responsible for immediately notifying the firm whenever the agent becomes aware that the assistant’s actions or omissions could result in injury to any party, or are in violation of license law, the Code of Ethics, or any other laws or regulations that could lead to any discipline or civil or criminal liability for the agent and/or the firm. The agent also agrees to indemnify the firm and hold the firm harmless from any liability or damages, costs, or attorneys’ fees. In other words, the agent assumes the responsibility for the assistant as far as supervision, liability and damages.

There is a check box at lines 44-46 if the firm will provide the assistant with a copy of the office policy manual and notify the assistant where to find the REEB rules. There is also a blank line to write in additional documents or guidance that the firm will give to the assistant.

Lines 47-49: Confidentiality/trade secrets

The assistant agrees to maintain the confidentiality of the clients and customers and of the firm, even after the agreement ends; this is especially so for any trade secrets the assistant may come to know.

Lines 50-51: Termination

Since the Assistant is an employee, termination is at will. Any party may end the relationship upon written notice, with or without cause.

Lines 52-66: Dispute resolution (mediation and binding arbitration)

These sections are new to the UPAA and provide the opportunity, if desired, for the firm, agent and assistant to agree that any disputes under the agreement will be resolved through mediation and/or binding

arbitration. Firms may choose to include an addendum to provide more detailed procedures if these dispute resolution methodologies are to be used. Some alternate dispute resolution resources are available at wilawlibrary.gov/topics/adr.php.

Lines 67-70; 104-105: Entire agreement and addenda

The whole of the UPAA must be in writing within the two-page form and any addenda or exhibits thereto. All attachments should be referenced in the Addenda section that automatically refers to the compensation exhibit and the reimbursement exhibit and has a blank line where other addenda or attachments can be written in for inclusion in the agreement.

Lines 71-86: Assistant prohibitions

The listing of prohibited activities restricts and limits the assistant's authority to try to keep the assistant away from any brokerage services or activities that would require a real estate license. The listed activities may be lined out, and additional prohibitions may be written into the provided blank lines.

Lines 87-103: Assistant duties and obligations and additional provisions

The prohibitions on the assistant's activities are followed by a section of blank lines where specific tasks and authorized duties may be written in. This is followed by additional provisions where other provisions may be added. By completing the assistant prohibitions section and writing in a description of permitted duties, the assistant's scope of authority may be laid out.

Lines 106-119: Reading and signatures

The firm executes the agreement with an authorized signature, while the agent and assistant sign as an individual or as an entity with an authorized signature, as the case may be.

Licensed Personal Assistants

Any concerns or administrative burdens associated with hiring an unlicensed personal assistant may be eliminated when the firm engages a licensed personal assistant who holds a real estate license. Using a licensed assistant, however, raises different considerations.

First of all, the licensed personal assistant must be engaged by the firm. If the licensed personal assistant has his or her license held with the firm, he or she may provide brokerage services according to the independent contractor or licensed personal assistant agreement with the firm. If the services provided are merely administrative in nature and do not include brokerage tasks such as conducting showings, negotiations and drafting contracts, then the licensee could provide such services without having the license held with the firm. In such a case the licensee would be working as an unlicensed personal assistant, despite the fact that he or she does have a real estate sales license.

Second, if the licensed personal assistant is to engage in any licensed activities, such as drafting contracts, local board and MLS rules generally will require that dues and fees be paid with respect to licensed personal assistants in the same manner in which they are paid for licensed salespeople. Therefore, any cost-effective benefits anticipated to be achieved through the use of a licensed assistant must be evaluated in light of these potential additional dues and fees, as well as the general business risk and liability considerations.

REALTOR® membership

Licensed personal assistants will be treated much like any other salesperson for purposes of the DSPS and the local board of REALTORS®. This means that the firm will be required to verify license renewal, may be assessed local board dues for the personal assistant, and may have to pay a user fee to the MLS.

It is the determination of each firm whether REALTOR® membership is a condition of the independent contractor or licensed personal assistant relationship. If the firm does not require REALTOR® membership, agents and licensed assistants may work for the firm, not as REALTORS® but licensees working for a REALTOR® firm. These agents and licensed assistants may not hold themselves as REALTORS®.

The term used for such an agent or licensed assistant is "salesperson assessment." According to the dues formula, it is the Designated REALTOR®'s obligation to pay fair share dues for each licensee associated with the firm who does not individually pay – either as a REALTOR® member or a salesperson assessment – dues as a REALTOR® member.

A licensee's access to the MLS is based on the MLS participant's membership. The MLS fees are based on the number of licenses held with the MLS participant. Whether the licensees are REALTORS® or not, the fee structure and access to the MLS remain the same.

① MORE INFORMATION

See page 11 of the July 2005 *Legal Update*, "MLS and Professional Standards," online at www.wra.org/LU_0507, and "The REALTOR®'s Dues Formula – A Fair Share," at www.realtor.org/mempolweb.nsf/pages/duesformulaarticle?OpenDocument&Login.

Licensed personal assistant services

The licensed personal assistant is a licensee associated with the firm like any other salesperson in that role. The difference is that the assistant's activities will focus on providing support and assistance to another licensee associated with the firm rather than acting independently. A licensed personal assistant who is associated with the firm may function as a salesperson and show properties or write offers, limited only by any contractual agreement delineating the parameters of the assistant's jobs and responsibilities.

A licensed assistant of a licensee may perform any of the following activities for which a real estate license is required. The following list is merely illustrative. The tasks performed by any particular licensed personal assistant will be determined by current law and the parameters established for the licensed personal assistant by the licensee with whom the assistant works and the firm with which the assistant is associated. Unless otherwise restricted, a licensed personal assistant may:

1. Host open houses, kiosks, home show booths or fairs.
2. Draft and disseminate advertising.
3. Show property.
4. Use approved forms, draft contracts and prepare documents in accordance with applicable license law.
5. Sign contracts such as a listing contract.

6. Provide a general explanation of provisions in approved forms.
7. Attend closings.
8. Perform any other activity for which a license is required.



REALTOR® Practice Tips

A licensed personal assistant should have Errors and Omissions (E&O) insurance coverage given his or her status as a licensee providing brokerage services.

Any licensee and firm drafting an agreement to engage a licensed personal assistant should carefully evaluate what services that assistant will be expected to provide. Consultation with legal counsel is prudent with regard to the pros and cons of specific lists of tasks versus general descriptions of the assistant's role within the agreement.

Compensation issues for licensed personal assistants

Licensed personal assistants must be engaged by and paid by the firm. When a licensed personal assistant is being compensated for performing a service that requires a license, he or she may only be compensated by the firm. Pursuant to Wis. Stat. § 452.14(3)(f), any commission or other compensation for licensed real estate services paid to the licensee, and any referral fee paid to the licensee, must only be received from the firm. Agents may pay a licensed personal assistant directly only if the activity does not require a license.

Tax requirements for independent contractors

If a licensed personal assistant is an independent contractor, there is no federal and state tax withholding. An IRS annual Form 1099 would be given showing the compensation paid to the assistant. The independent contractor is responsible for all tax obligations.

For the requirements that apply should the licensed personal assistant be an employee, see the Withholding Requirements of Employers discussion on page 6 of this *Update*.

Updated Licensed Personal Assistant Agreement Form

The WRA Licensed Personal Assistant Agreement has been updated to comply with recent legislation and changes to the administrative rules. It no longer provides a table checklist of duties a personal assistant might perform and instead leaves any itemization of tasks to the parties completing the agreement.

The Licensed Personal Assistant Agreement is not required by Chap. 452 of the statutes or the administrative code, but a written agreement setting forth the parameters of the relationship is certainly beneficial and recommended. The agreement gives the firm information regarding the services the licensed assistant will be performing for the agent. The agreement also provides an opportunity for the firm and agent to discuss and determine responsibility for the licensed personal assistant's compensation.

Updated WRA licensed personal assistant agreement

A draft copy of the 2016 version of the WRA Licensed Personal Assistant Agreement (LPAA) appears on pages 12-14 of this *Update*. It is expected the agreement will be available in zipForm in November 2016. The following discussion walks through the revised LPAA and overviews the provisions.

Since the licensed personal assistant is a licensee associated with the firm and often is an independent contractor, the LPAA in many respects resembles the independent contractor agreements used by firms for other licensees.

Lines 1-7: Terminology and parties

The LPAA adopts the new terminology of the Chapter 452 Modernization Act and refers to what had been typically referred to as the brokerage company or employing broker as the firm. Wis. Stat. § 452.01(4w) defines a firm as “a licensed individual broker acting as a sole proprietorship or a licensed broker business entity.” Therefore the term “firm” refers to the licensed business entity or the sole proprietor broker who has engaged licensees to perform real estate services. Instead of referring to a sales agent or an agent, the beginning of the revised ICA refers to the “licensee” who has been engaged by the firm. The revised LPAA acknowledges that the licensee engaged by the firm may be an individual who holds a broker's license or a salesperson's license or a licensed business entity. Once the licensee retained by the firm has been identified, the balance of the form refers to the licensee as “agent” for ease of use.

With regard to the licensed personal assistant, the revised LPAA acknowledges that the assistant engaged by the firm may be an individual who holds a broker's license or a salesperson's license or a licensed business entity. Once the assistant has been identified, the balance of the form refers to the “assistant.”

Lines 8-13: Real estate services

This section confirms that the relationship between the firm and the agent is an independent contractor relationship, not an employment relationship. Both the agent and the assistant are retained by the firm to provide real estate brokerage services.

Lines 14-20: Legal and ethical compliance

The firm, agent and assistant agree to comply with all applicable law and the Code of Ethics, to practice competently, and to maintain real estate licenses and REALTOR® memberships. This section may need to be modified if that is not the policy or expectation of a particular firm.

Line 21: Assistant status

Unless the LPAA is modified the assistant will be associated with the firm and not hired by the agent.

Lines 22-29: Tax status of assistant

This section offers a choice and check boxes: the box at line 29 may be checked if the licensed personal assistant will be an employee while the box at line 23 is checked if the assistant will be an independent contractor. If an independent contractor, lines 23-28 fulfill one of the important criteria under the independent contractor safe harbor tests: a written agreement between the assistant and the firm that provides that the assistant shall not be treated as an employee for federal and state tax purposes. It also confirms the assistant's status as self-employed.

Lines 30-43: Compensation

Again there are boxes to check. The box at line 31 is checked if the assistant is an independent contractor. The paragraph on lines 31-38 provides that the firm shall pay the assistant on the basis of production and output that is, commission, and not the number of hours worked, in accordance with the attached compensation exhibit. The details of the firm's commissions are left to the firm to delineate in an exhibit to the LPAA. The exhibit may be modified from time to time and an updated exhibit is effective three calendar days after the agent receives the changes. In addition, this section indicates that commission shall be due to the agent within 48 hours after the firm's receipt thereof, although payment may be delayed in the case of a bona fide dispute over entitlement to the commission.

If the box at line 39 is checked then the assistant is an employee of the firm. Again the details of the compensation are to be delineated in the compensation exhibit that will be attached to the LPAA.

The box at line 42 may be checked if the agent is reimbursing the firm for the assistant's compensation. The details of such arrangements may be stated in an attached reimbursement exhibit.

Lines 44-58: Supervision and forms

This section places responsibility for monitoring the assistant's activities on both the firm and the agent. The firm must provide supervision per Wis. Stat. § 452.132 because the assistant is a licensee, but may delegate responsibility to the agent if the agent has a broker's license. In other words the firm might make the agent the assistant's supervising broker.

The agent is responsible for immediately notifying the firm whenever the agent becomes aware that the assistant's actions or omissions could result in injury to any party, or are in violation of license law, the Code of Ethics, or any other laws or regulations that could lead to any discipline or civil or criminal liability for the agent and/or the firm. The agent also agrees to indemnify the firm and hold the firm harmless from any liability or damages, costs or attorneys' fees. In other words, the agent assumes the responsibility for the assistant as far as supervision, liability, and damages.

The firm will provide the assistant with a copy of the office policy manual and notify the assistant where to find the REEB rules. There is also a blank line to write in additional documents or guidance that the firm will give to the assistant.

Supervision is governed by statute as is the use of forms – the assistant is to use state-approved forms, together with any firm-provided forms such as addenda, all in accordance with the statutes and rules for forms use.

Lines 59-63: Record keeping

This section emphasizes that the assistant should not only make sure that transaction documents that were used, prepared or received by the assistant are distributed to the parties and other agents in a transaction in accordance with the amended Wis. Admin. Code chapter REEB 15, but also that copies of all transaction and brokerage service documents are submitted to the firm so that the firm can fulfill its statutory duties to retain records as required by the REEB.

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Lines 64-65: Insurance

The assistant is responsible for his or her vehicle insurance in a minimum amount as may be specified in the blank line.

Lines 66-68: Confidentiality/trade secrets

The confidentiality of clients and customers and the firm is to be maintained, even after the agreement ends. This is doubly so for any trade secrets the assistant may come to know.

Lines 69-74: Termination

Termination of the agreement calls for advance written notice by any party. During the interim between the notice and the official end date, the firm may wish to limit the scope of the assistant's activities to minimize the opportunity to wrongfully interfere with the firm's relationships and any temptation to abscond with the firm's listings, buyer agencies and clients. If the assistant has lost the assistant's real estate license, the termination is immediate.

Lines 75-76: Compensation following termination

One of the most contentious areas may be regarding the compensation due when the assistant leaves and there are transactions midstream —transactions where work has been done but there has been no closing or payment of commission. Any such agreements or arrangements should be addressed in the compensation exhibit attached to the LPAA.

Lines 77-91: Dispute resolution (mediation and binding arbitration)

These sections are new to the LPAA and provide the opportunity, if desired, for the firm, agent and assistant to agree that any disputes under the agreement will be resolved through mediation and/or binding arbitration. Firms may choose to include an addendum to provide more detailed procedures if these dispute resolution methodologies are to be used. Some alternate dispute resolution resources are available at wilawlibrary.gov/topics/adr.php.

Lines 92-95; 131-132: Entire agreement and addenda

The whole of the LPAA must be in writing within the three-page form and the addenda and exhibits thereto. All attachments should be referenced in the addenda section that automatically refers to the compensation exhibit and the reimbursement exhibit and has a blank line where other addenda or attachments can be written in for inclusion in the agreement.

Lines 96-110: Assistant prohibitions

The listing of prohibited activities restricts and limits the assistant's authority. The listed activities may be lined out and additional prohibitions may be written into the provided blank lines.

Lines 111-130: Assistant duties and obligations and additional provisions

The prohibitions on the assistant's activities are followed by a section of blank lines where specific tasks and authorized duties may be written in. This is followed by additional provisions where other provisions may be added.

Lines 133-146: Reading and signatures

The firm executes the agreement with an authorized signature, while the agent and the assistant sign as an individual or as an entity with an authorized signature, as the case may be.

① MORE INFORMATION

See the NAR Field Guide to Personal Assistants at www.realtor.org/field-guides/field-guide-to-personal-assistants; the Summer 2012 *Broker Supervision Newsletter*, "Personal Assistant Primer," at www.wra.org/bnssummer12; and "A Field Guide to Personal Assistants," in the August 2006 *Wisconsin Real Estate Magazine* at www.wra.org/WREM/Aug06/Assistants.

Watch the Legal Update Video Online:**EDITORIAL STAFF****Author**

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Contact the Wisconsin REALTORS® Association to subscribe:

4801 Forest Run Road
Madison, WI 53704-7337

608-241-2047
800-279-1972
www.wra.org



LICENSED PERSONAL ASSISTANT AGREEMENT

This Licensed Personal Assistant Agreement (hereinafter "Agreement") is entered into by and between the following parties:

(1) Name of Firm (include business entity name and/or trade name, as applicable): _____ (hereinafter "Firm");

(2) Name of Licensee: _____ who holds a current Wisconsin real estate license as a broker salesperson business entity CHECK ONE (hereinafter "Agent"); and

(3) Name of Personal Assistant: _____ who holds a current Wisconsin real estate license as a broker salesperson business entity CHECK ONE (hereinafter "Assistant").

■ REAL ESTATE SERVICES: Agent is currently associated with the Firm. The Firm retains and engages Agent as an independent contractor to assist the Firm in the performance of real estate-related activities and the conduct of the Firm's real estate business. Assistant is currently associated with the Firm. The Firm retains and engages Assistant to assist the Agent in the performance of real estate-related activities and the conduct of the Firm's real estate business. Assistant agrees not to conduct business in his or her own name and that any leads, contacts, clients or customers of Assistant will be referred to and handled by the Agent with the assistance of the Assistant.

■ COMPLIANCE WITH APPLICABLE LAW AND REALTOR® CODE OF ETHICS: In connection with the performance of brokerage services for the Firm's clients and customers, Assistant, Agent and the Firm agree to abide by all applicable laws, rules and regulations and the National Association of REALTORS® Code of Ethics; to perform brokerage services in a competent manner consistent with the Firm's business policies; to maintain current real estate licenses; and to become and remain a member of the _____ Association of REALTORS®, the Wisconsin REALTORS® Association and the National Association of REALTORS® as an indication of commitment to the real estate profession and high ethical standards of practice.

■ STATUS: Unless otherwise indicated, Assistant will be associated with the Firm, not the Agent.

■ TAX STATUS: CHECK ONE

Assistant will be associated with the Firm as an independent contractor for tax purposes. Assistant shall not be treated as an employee for federal tax purposes or state tax purposes with respect to the services performed by Assistant as a real estate licensee under this Agreement. Assistant is responsible for paying Assistant's estimated income tax payments, self-employment taxes, occupational taxes and other taxes, if any, to the appropriate governmental entities. The Firm will not withhold any taxes from compensation due to Assistant. Both parties agree to make all tax returns and reports in a manner consistent with Assistant's status as an independent contractor.

Assistant will be associated with the Firm as employee for tax purposes.

■ COMPENSATION CHECK AS APPLICABLE:

If Assistant is an independent contractor. As compensation for the services provided under this Agreement, the Firm shall pay the Assistant on the basis of production and output (commission), and not the number of hours worked, in accordance with the attached Compensation Exhibit. Compensation payments shall be due to the Assistant within 48 hours after the Firm's receipt of the commission on which they are based or performance of the task for which they are made. Payments may be deferred if there is a bona fide dispute over the Firm's or the Assistant's entitlement to the compensation. The Firm may revise the Compensation Exhibit from time to time, provided any revision shall not be effective until the end of the third calendar day following the Assistant's actual receipt of the revisions, and revisions shall not apply to any commissions earned before Assistant's actual receipt of the changes. Assistant shall not be eligible to participate in any of the Firm's employee benefit programs unless expressly stated herein.

If Assistant is an employee of the Firm. Assistant shall be compensated in accordance with the attached Compensation Exhibit. The Firm shall be responsible for making compensation payments to Assistant and for all required reporting and withholding.

Agent reimbursement: Agent shall reimburse and compensate the Firm for the services of Assistant in accordance with the attached Reimbursement Exhibit.

■ FIRM SUPERVISION: The Firm shall provide supervision and support for the Assistant as required by Wis. Stat. § 452.132. The Firm may delegate some or all of its responsibility to supervise Assistant to Agent with regard to the some or all of the Assistant's real estate activities, if Agent holds a broker's license. Any such delegation of supervisory responsibility shall be in writing, in compliance with Wis. Stat. § 452.132(5) and in accordance with the attached copy of the supervision delegation.

If Agent becomes aware of any action or failure to act by the Assistant which could result in injury to any party, administrative discipline for the Firm or Agent, or civil or criminal liability for the Firm or Agent, Agent shall notify the Firm immediately in writing. Agent agrees to indemnify and hold the Firm harmless from any and all liability arising from the actions of Assistant, including all costs of defending against any claims made, including reasonable attorney fees.

The Firm will advise Assistant where to find a copy of the applicable REEB rules, provide Assistant with the office policy manual containing a written statement of procedures as required by Wis. Stat. § 452.132(2)(a) and:

COMPLETE AS APPLICABLE.

■ USE OF FORMS: If the Assistant uses forms, the Assistant shall use the forms approved by the Real Estate Examining Board and other forms and language provided by the Firm to ensure legal compliance and uniformity reflecting the Firm's business practice, unless the Firm has authorized a variation. Forms shall be used in accordance with Wis. Stat. § 452.40 and Wis. Admin. Code Chapter REEB 16.

■ RECORD KEEPING: Assistant shall, as applicable, prepare, distribute and retain appropriate records on all transactions in which Assistant is involved in conformance with Wis. Admin. Code Chapter REEB 15. Assistant shall submit to the Firm in a timely manner all agency agreements, offers to purchase, leases, and other documents that are executed by the parties, and records related to the transactions and brokerage services provided on behalf of the Firm that are used or received by Assistant as required under Wis. Stat. § 452.132(6)(b).

64 ■ **INSURANCE:** Assistant shall maintain at Assistant's expense and provide evidence of automobile liability insurance in the
65 amount of at least \$ _____ and shall name the Firm as an additional insured.

66 ■ **CONFIDENTIALITY/TRADE SECRETS:** During the term of this Agreement and following termination, Assistant shall maintain the
67 confidentiality of the information of all clients, customers and the Firm. Assistant shall not use or disclose any information which has
68 been provided by the Firm to the Assistant as a trade secret and which has been treated and protected by the Firm as such.

69 ■ **TERMINATION:** Any party may terminate this Agreement at any time without cause by delivery of a written notice to the other
70 parties setting a termination date not less than _____ business days ("5" if no number is entered) after the date of delivery. The
71 Firm may, in its discretion, limit the Assistant's scope of activities and authority hereunder during the period between delivery of the
72 termination notice and the termination date. If the termination is based upon or concurrent with the Assistant's loss of Assistant's
73 real estate license, the termination shall be effective for all purposes on the earlier of the stated termination date or the date the
74 license terminates.

75 ■ **COMPENSATION FOLLOWING TERMINATION:** The Firm shall owe the Assistant the compensation accrued through the
76 termination date per the provisions addressing compensation after termination in the attached Compensation Exhibit.

77 ■ **DISPUTE RESOLUTION:** This Agreement will be construed under Wisconsin law.

78 **Mediation.** The Firm, Agent and Assistant agree to mediate all controversies, disputes, claims, and other matters in question
79 arising between them under this Agreement, including the obligation to pay compensation, before resorting to arbitration or court
80 action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this
81 paragraph applies, any party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before
82 commencement of an action, refuses to mediate after a request has been made, then that party shall not be entitled to recover
83 attorney fees, even if they would otherwise be available to that party in any such action.

84 **Binding Arbitration.** The Firm, Agent and Assistant agree that any controversy, dispute or claim in law or equity arising
85 between them under this Agreement, including with regard to the obligation to pay compensation, which is not settled through
86 mediation, shall be decided by neutral, binding arbitration. The arbitrator shall be a retired judge or justice, or an attorney with at
87 least 5 years of real estate law experience, unless the parties mutually agree to another arbitrator. In all respects, the arbitration
88 shall be conducted in accordance with Wis. Stat. Chapter 788. Each party to any arbitration (or litigation to enforce the arbitration
89 provision of this Agreement or an arbitration award) will pay its own fees, costs, and expenses, including attorney's fees, and will
90 equally split the arbitrator's fees and administrative fees of arbitration. The Firm, Agent and Assistant acknowledge that by agreeing
91 to this provision they are foregoing their rights to resolution through litigation before a judge or jury.

92 ■ **ENTIRE AGREEMENT:** This Agreement and any attached exhibits and addenda constitute the entire agreement of the parties
93 relating to the brokerage activities performed by Assistant on behalf of Agent and the Firm. Except as provided herein, it may only
94 be amended or modified by a writing executed by all parties. All parties waive any right they may have to seek or rely on an oral
95 amendment hereof.

96 ■ **ASSISTANT IS NOT AUTHORIZED TO:** STRIKE AND COMPLETE AS APPLICABLE

97 a. Enter into any agreement as agent of the Firm.
98 b. Order any goods or services in the name of, or billable to, the Firm. Assistant shall insure that all goods or services ordered are
99 billable to a party to a transaction, unless the Assistant's supervising broker has expressly authorized Assistant to order the goods
100 or services in the Firm or the Agent's name and has expressly agreed to be personally responsible for the charges.
101 c. Provide a legal interpretation for a party regarding information on listings, titles, financing documents, offers or other real estate or
102 closing contracts, or other agreements relating to a transaction.
103 d. Negotiate or agree to any commission, commission split, management fee, or referral fee on behalf of the Agent or the Firm.
104 e. Other: _____
105 _____
106 _____
107 _____
108 _____
109 _____
110 _____

111 ■ **ASSISTANT DUTIES AND OBLIGATIONS:** The duties of the Assistant shall include the following: _____
112 _____
113 _____
114 _____
115 _____
116 _____
117 _____
118 _____
119 _____

120 ■ **ADDITIONAL PROVISIONS:** _____
121 _____
122 _____
123 _____
124 _____
125 _____
126 _____
127 _____
128 _____
129 _____
130 _____

131 ■ **ADDENDA:** Any attached Compensation Exhibit, any attached Reimbursement Exhibit and _____
132 _____ is/are made part of this Agreement.

133 ■ **READING:** By signing and dating below, each party acknowledges they have received and read a copy of this Agreement.

134 Firm Name: _____

135 (x) _____
136 Authorized Signature ▲ Print Name & Title Here ► Date ▲

137 (x) _____
138 Agent's Signature ▲ Print Name Here ► Date ▲

139 Agent Entity Name (if a business entity): _____

140 (x) _____
141 Authorized Signature ▲ Print Name & Title Here ► Date ▲

142 (x) _____
143 Assistant's Signature ▲ Print Name Here ► Date ▲

144 Assistant Entity Name (if a business entity): _____

145 (x) _____
146 Authorized Signature ▲ Print Name & Title Here ► Date ▲



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UNLICENSED PERSONAL ASSISTANT AGREEMENT

This Unlicensed Personal Assistant Agreement (hereinafter "Agreement") is entered into by and between the following parties:

(1) **Name of Firm** (include business entity name and/or trade name, as applicable): _____ (hereinafter "Firm");

(2) **Name of Licensee:** _____ who holds a current Wisconsin real estate license as a broker salesperson business entity **CHECK ONE** (hereinafter "Agent"); and

(3) **Name of Personal Assistant:** _____ (hereinafter "Assistant").

■ **REAL ESTATE SERVICES:** Agent is currently associated with the Firm. The Firm retains and engages Agent as an independent contractor to assist the Firm in the performance of real estate-related activities and the conduct of the Firm's real estate business.

■ **ASSISTANT STATUS AND SERVICES:** Assistant is employed as an unlicensed assistant and will only provide services for which a real estate license is not required under Wis. Stat. § 452.03(2). The services provided by Assistant are limited to those that are purely administrative, clerical, or personal in nature.

The Assistant is an employee of the Firm and will assist the Agent in the performance of real estate-related activities and the conduct of the Firm's real estate business.

The Assistant is an employee of the Agent and will assist the Agent in the performance of real estate-related activities and the conduct of the Firm's real estate business.

Assistant agrees not to conduct business in his or her own name and that any leads, contacts, clients or customers of Assistant will be referred to and handled by the Agent with the assistance of the Assistant.

■ **COMPLIANCE WITH APPLICABLE LAW AND REALTOR® CODE OF ETHICS:** In connection with the performance of brokerage services for the Firm's clients and customers, Assistant, Agent and the Firm agree to provide services in accordance with all applicable laws, rules and regulations and the National Association of REALTORS® Code of Ethics. The Agent and the Firm agree to perform brokerage services in a competent manner consistent with the Firm's business policies; to maintain current real estate licenses; and to become and remain a member of the _____

Association of REALTORS®, the Wisconsin REALTORS® Association and the National Association of REALTORS® as an indication of commitment to the real estate profession and high ethical standards of practice.

■ **TAX STATUS:** Assistant will be associated with the Firm as employee for tax purposes.

■ **COMPENSATION** **CHECK AS APPLICABLE:**

If Assistant is an employee of the Firm. Assistant shall be compensated in accordance with the attached Compensation Exhibit. The Firm shall be responsible for making compensation payments to Assistant and for all required reporting and withholding.

If Assistant is an employee of the Agent. Assistant shall be compensated in accordance with the attached Compensation Exhibit. The Agent shall be responsible for making compensation payments to Assistant and for all required reporting and withholding, either personally or through a third-party payroll or accounting service.

Agent reimbursement: Agent shall reimburse and compensate the Firm for the services of Assistant, and for any accounting or payroll services provided by the Firm, in accordance with the attached Reimbursement Exhibit.

■ **SUPERVISION:** Assistant will provide the Firm or Agent with services that are limited to those that are purely administrative, clerical, or personal in nature, under the direction of Agent or the Firm.

Agent shall monitor all activities of Assistant while Assistant is acting within the scope of his or her duties for Agent. Agent shall be responsible for the actions of Assistant taken while under the supervision or at the direction of Agent. If Agent becomes aware of any action or failure to act by the Assistant which could result in injury to any party, administrative discipline for the firm or Agent, or civil or criminal liability for the Firm or Agent, Agent shall notify the Firm immediately in writing. Agent agrees to indemnify and hold the Firm harmless from any and all liability arising from the actions of Assistant, including all costs of defending against any claims made, including reasonable attorney's fees.

The Firm will advise Assistant where to find a copy of the applicable REEB rules, provide Assistant with the office policy manual containing a written statement of procedures and: _____

COMPLETE AS APPLICABLE.

■ **CONFIDENTIALITY/TRADE SECRETS:** During the term of this Agreement and following termination, Assistant shall maintain the confidentiality of the information of all clients, customers and the Firm. Assistant shall not use or disclose any information which has been provided by the Firm to the Assistant as a trade secret and which has been treated and protected by the Firm as such.

■ **TERMINATION:** Any party may terminate this Agreement at any time with or without cause by delivery of a written notice to the other parties.

■ **DISPUTE RESOLUTION:** This Agreement will be construed under Wisconsin law.

Mediation. The Firm, Agent and Assistant agree to mediate all controversies, disputes, claims, and other matters in question arising between them under this Agreement, including the obligation to pay compensation, before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action.

Binding Arbitration. The Firm, Agent and Assistant agree that any controversy, dispute or claim in law or equity arising between them under this Agreement, including with regard to the obligation to pay compensation, which is not settled through mediation, shall be decided by neutral, binding arbitration. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of real estate law experience, unless the parties mutually agree to another arbitrator. In all respects, the arbitration shall be conducted in accordance with Wis. Stat. Chapter 788. Each party to any arbitration (or litigation to enforce the arbitration provision of this Agreement or an arbitration award) will pay its own fees, costs, and expenses, including attorney's fees, and will

65 equally split the arbitrator's fees and administrative fees of arbitration. The Firm, Agent and Assistant acknowledge that by agreeing
66 to this provision they are foregoing their rights to resolution through litigation before a judge or jury.

67 ■ **ENTIRE AGREEMENT:** This Agreement and any attached exhibits and addenda constitute the entire agreement of the parties
68 relating to the administrative, clerical, or personal services performed by Assistant on behalf of Agent and the Firm. Except as
69 provided herein, it may only be amended or modified by a writing executed by all parties. All parties waive any right they may have
70 to seek or rely on an oral amendment hereof.

71 ■ **ASSISTANT IS NOT AUTHORIZED TO:** STRIKE AND COMPLETE AS APPLICABLE

- 72 a. Enter into any agreement as agent of the Firm.
- 73 b. Order any goods or services in the name of, or billable to, the Firm. Assistant shall ensure that all goods or services ordered are
74 billable to a party to a transaction, unless the Agent has expressly authorized Assistant to order the goods or services in the Firm or
75 the Agent's name and has expressly agreed to be personally responsible for the charges.
- 76 c. Provide a legal interpretation for a party regarding information on listings, titles, financing documents, offers or other real estate or
77 closing contracts, or other agreements relating to a transaction.
- 78 d. Assist Agent or another licensee at an open house for the sale of real estate or a business without the direct, on-premises
79 supervision and presence of a licensee, or provide any services at an open house for which a license is required. "Open house"
80 means a showing of real estate open to the public for viewing without an individual appointment.
- 81 e. Negotiate or agree to any commission, commission split, management fee, or referral fee on behalf of the Agent or the Firm.
- 82 f. Other: _____

83 _____
84 _____
85 _____
86 _____

87 ■ **ASSISTANT DUTIES AND OBLIGATIONS:** The duties of the Assistant shall include the following: _____

88 _____
89 _____
90 _____
91 _____
92 _____
93 _____
94 _____
95 _____

96 ■ **ADDITIONAL PROVISIONS:** _____

97 _____
98 _____
99 _____
100 _____
101 _____
102 _____
103 _____

104 ■ **ADDENDA:** Any attached Compensation Exhibit, any attached Reimbursement Exhibit and _____
105 _____ is/are made part of this Agreement.

106 ■ **READING:** By signing and dating below, each party acknowledges they have received and read a copy of this Agreement.

107 Firm Name: _____

108 (x) _____
109 Authorized Signature ▲ Print Name & Title Here ► Date ▲

110 (x) _____
111 Agent's Signature ▲ Print Name Here ► Date ▲

112 Agent Entity Name (if a business entity): _____

113 (x) _____
114 Authorized Signature ▲ Print Name & Title Here ► Date ▲

115 (x) _____
116 Assistant's Signature ▲ Print Name Here ► Date ▲

117 Assistant Entity Name (if a business entity): _____

118 (x) _____
119 Authorized Signature ▲ Print Name & Title Here ► Date ▲

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No representation is made as to the legal validity of any provision or the adequacy of any provision in any specific relationship.

The duties of an Assistant may include the following:

CLIENT - CUSTOMER OUTREACH TASKS		OFFER TASKS	
	Schedule appointments for Agent.		Preview property with Agent.
	Respond to questions by quoting directly from published information.		Research properties for showings.
	Answer the telephone, take messages, and forward calls to the Agent.		Make showing appointments and conduct showings.
	Host open houses, kiosks, or home show booths or fairs		Find answers to buyers' questions
	Do telemarketing, in compliance with State and Federal law and according to the script approved by Agent or the Firm.		Complete offer and related forms at direction of and with approval of the Agent.
MARKETING TASKS			Obtain signatures and deliver contracts.
	Prepare and distribute flyers and promotional information for social media under direction and approval of Agent.		Schedule and attend property inspections and testing.
	Write newsletters, blogs and social media postings under direction and approval of Agent.		Schedule and attend pre-closing walk-through
	Prepare property data sheets under direction and approval of Agent.		Monitor available loans, rates and loan criteria and apprise the Agent.
	Prepare advertising copy and layout under direction and approval of Agent.		Order routine repairs as directed by the Agent (bills in parties' names).
	Place advertising under direction and approval of Agent.		Communicate with service companies at the request of Agent.
	Mail Just Listed and Just Sold cards.		Follow-up on a transaction after an offer has been accepted.
	Make follow up calls to Just Sold cards.		Open property for appraisers, inspectors, testers, etc.
	Keep website content fresh and current.		Arrange loan application appointments.
	Develop and maintain mailing lists and past buyer and seller contacts list. Send communications as directed by the Agent.		Follow up on loan commitments and loans in process at direction of Agent.
	Review and proofread MLS listings, data sheets, all advertising and social media postings		Forward all required information and documents to title company.
	Coordinate direct mail, brochures, postcards, emails, social media postings, etc.		Secure/confirm public information regarding taxes, liens, sewer district, water district, etc.
	Search MLS/online each morning for new listings.		Assemble documents and file for closing.
	Schedule office tours of new listings.		Attend closing.
	Contact clients and customers on a regular basis.		File all transactions documents in Firm's files.
	Forward weekly/monthly marketing updates to sellers.		Deliver financial and title documents as needed.
	Assemble Buyers Guide.		Monitor deadlines for parties
	Assemble FSBO leads and contact FSBO to schedule listing presentation and follow up after presentation.		Hand write thank you cards.
	Issue invitations to open houses		Provide general explanations of contracts and transaction information (no legal advice) to parties.
	Prepare mailings, emails, social media postings.		
	Send closing gifts.		
	Make cold calls.		
LISTING TASKS			
	Prepare CMAs		
	Update listing presentation; assemble listing packets.	MISCELLANEOUS TASKS	
	Prepare listing contract and associated documents under direction of Agent.		Runs errand, make photocopies, take messages, return calls/respond to inquiries as directed by the Agent
	Process new listings and enter into the MLS.		Record and deposit money to be placed in trust account at direction of Agent.
	Pick up keys and make extra keys as needed.		
	Install and remove lock boxes.		
	Set up showing appointments.		
	Attend listing appointments and gather client information.		
	Follow up on showings and gather feedback.	LANDLORD – TENANT TRANSACTIONS	
	Install and remove signs and open house directional arrows.		Prepare rental agreements/leases and related documents as requested by the Agent
	Host open houses.		Place routine telephone calls on late rent payments.
	Identify and remove expired listings.		Accept rent and provide receipt.
	Verify property taxes.		Record and deposit earnest money, security deposits, and rents.
	Photograph homes/new listings at direction of Agent.		
	Assemble appraiser packets		
	Proof forms, MLS and data sheets.		

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