

Section 5

Property Management: Permitted vs. Unlawful Activities of Unlicensed Employees



Sarah Mills, broker, has a written agency agreement with an owner to manage the owner's apartment complex. Sarah has hired Phillip as a W-2 employee to act as a leasing agent. Phillip does not have a real estate license.

- a. May Phillip legally show units in the complex to prospective tenants? Yes / No
- b. May Phillip legally tell prospective tenants the rent rates for the units? Yes / No
- c. One afternoon, Phillip shows a three-bedroom unit to a prospective tenant. When Phillip tells the tenant that the rent will be \$1700 per month, the tenant says, "That's a little too high for me, but I know I can handle \$1500 per month. Is that possible?" Phillip knows that the owner has accepted \$1500 in the past.

What should Phillip say to the prospective tenant? _____

LEARNING OBJECTIVE

After completing this Section you should be able to identify permitted vs. unlawful activities of unlicensed employees of brokers engaging in commercial or residential property management.

PROPERTY MANAGERS MUST BE LICENSED IN NORTH CAROLINA

In North Carolina, a commercial or residential property manager must be a licensed real estate broker. (See G.S. 93A-2(a).)

“Managing” real property in the brokerage sense often involves the leasing or renting of property. While unlicensed individual property owners may lease their properties themselves, they may not pay or give any consideration to unlicensed friends, siblings, children, etc. to assist them in leasing their properties, whether collecting rents, showing the property to prospective tenants, etc. Only the title owners of real property may buy, lease, sell, or exchange their property without having a broker license.

Thus, any individual or entity which undertakes to manage real property belonging to others for compensation or consideration must be a licensed real estate broker.

Even if a broker does not intend to become a full-time property manager, most will have occasion to be involved in renting or leasing an owner’s property. Thus, all licensees should have at least a basic understanding of property management, the functions of a property manager, and the necessity of a written property management agreement.

LICENSING EXCEPTION FOR SALARIED EMPLOYEES OF A BROKER ENGAGING IN PROPERTY MANAGEMENT

License Law permits brokers who engage in property management to hire unlicensed salaried (i.e., W-2) employees to assist with leasing activities.

These unlicensed salaried employees may be onsite at an apartment complex the broker has agreed to manage, or may be showing single family homes the broker has listed for lease to prospective tenants.

Unlicensed, salaried employees are not permitted to negotiate issues such as rental amount, partial payment of tenant security deposit, etc. Such issues must be referred to the broker.

G.S. 93-A-2(c)(6) states that the provisions of GS 93A-1 and GS 93A-2 do not apply to and do not include:

Any salaried person employed by a licensed real estate broker, for and on behalf of the owner of any real estate or the improvements thereon, which the licensed broker has contracted to manage for the owner, if the salaried employee’s employment is limited to:

- exhibiting units on the real estate to prospective tenants;
- providing the prospective tenants with information about the lease of the units;
- accepting applications for lease of the units; completing and executing preprinted form leases; and
- accepting security deposits and rental payments for the units only when the deposits and rental payments are made payable to the broker employed by the owner.

The salaried employee shall not negotiate the amount of security deposits or rental payments and shall not negotiate leases or any rental agreements on behalf of the owner or broker. However, in a vacation rental transaction as defined by G.S. 42A-4(6), the employee may offer a prospective tenant a rental price and term from a schedule setting forth prices and terms and the conditions and limitations under which they may be offered. The schedule shall be written and provided by the employee's employing broker with the written authority of the landlord.

| Permitted Activities related to Property Management | |
|--|---|
| Unlicensed, salaried assistants MAY: | ONLY licensed brokers MAY: |
| Act as a courier at the direction of a broker | Solicit or negotiate management contracts from prospective clients |
| Coordinate or confirm appointments between brokers and other persons | Prepare information to be placed in promotional material or advertisements for properties for sale or lease |
| Schedule appointments for showing properties listed for rent | Discuss or explain management agreements, leases, or other similar matters with persons outside the firm |
| Show rental properties managed by the broker to prospective tenants | Negotiate the amount of rent, deposits, or other lease provisions in connection with properties listed for rent by the firm |
| Complete and execute preprinted form leases for rental property managed by the firm | Determine the deductions from a tenant security deposit |
| Answer basic questions from prospective tenants and others about listed properties if the broker has provided the information in promotional materials | Hold themselves out as licensed brokers |
| Receive and forward phone calls, texts and emails to the employing broker or other licensees in a firm | |
| Submit listings and changes to a MLS provider, but only if the listing or change is based upon data supplied by a broker | |
| Assist a broker with inspecting rental properties | |
| Research and obtain copies of documents in the public domain, such as the Registers of Deeds, Clerks of Court, or tax offices | |
| Obtain keys for listed properties | |
| Record and deposit trust monies under the close supervision of the office broker-in-charge (BIC) | |
| Type in lease forms with information provided by brokers | |
| Check license renewal records and other personnel information pertaining to brokers at the direction of the BIC | |
| Prepare checks and otherwise act as bookkeeper for the firm's operating account under the close supervision of the BIC | |
| Place "For Rent" signs on property at the direction of a broker | |
| Order and supervise routine and minor repairs at the direction of a broker | |



Is a property owner permitted to hire an unlicensed individual or entity to assist with leasing and managing the owner's properties?

Answer: No. Only W-2 employees of a licensed broker who has been hired to manage property for others will qualify for this exception. Unlicensed property owners may NOT pay unlicensed persons who have no ownership interest in the property to assist them in leasing or managing property they own, even if such persons are related to the property owner.



What will happen if an unlicensed, salaried employee of a broker misrepresents information about a property?

Answer: Brokers (whether an individual broker or a firm) are subject to disciplinary action for their employees' conduct when "the broker's unlicensed employee, who is exempt from the provisions of this Chapter [93A] under G.S. 93A-2(c)(6), has committed, in the regular course of business, any act which, if committed by the broker, would constitute a violation of G.S. 93A-6(a) for which the broker could be disciplined..." [See G.S. 93A-6(b)(4).]

The broker must adequately train and supervise all employees and may be held accountable for employees' conduct.

All employees should be extremely well trained in fair housing issues, ADA compliance, Chapter 42 of the N.C.G.S., and in the broker's trust money procedures.



If a broker manages multiple apartment complexes on behalf of owners, there will likely be offices at each complex to which the tenants go to pay their rent, inquire about availability, register repair requests, etc. Would each of these offices need to have a dedicated broker-in-charge?

Answer: Rule 58G. 0103 defines an "office" as "...any place of business where acts are performed for which a real estate license is required or where monies received by a broker acting in a fiduciary capacity are handled or records for such trust monies are maintained."

If all the services provided at the apartment complex locations fall within the exempted activities identified in G.S. 93A-2(c)(6), then the acts being performed there do not require a license, as they fall within the property management exception. Thus, those locations would not be "offices" as defined in Rule 58G. 0103 and would not require a separate broker-in-charge. The employing broker/broker-in-charge would be responsible for supervising all of the unlicensed salaried employees at their various locations.



A tenant moves out at the end of her lease term and immediately requests a refund of the \$1,000 security deposit. The broker's unlicensed employee inspects the property, deducts \$250 from the security deposit for routine cleaning of the carpet, and instructs the firm's bookkeeper to issue a refund check to the tenant in the amount of \$750. Is this okay?

Answer: No. An unlicensed employee is not permitted to make determinations regarding security deposit deductions. [Further, brokers are not permitted to make deductions for routine cleaning.]



FOR DISCUSSION

1. Review each of the following job descriptions. For each description, decide whether it is an appropriate ad for an unlicensed, salaried assistant. Explain why or why not.

a. *Assistant Wanted:*

W-2 status

Must be willing to place "For Rent" and directional signs

Must be able to communicate with property owners regarding lease terms

Must be able to assist in completing leases and maintaining transaction files

Must be in the office from 9 am until 5 pm Monday-Friday

Is this an appropriate ad for an unlicensed, salaried assistant? Why or why not?

b. *Assistant Wanted:*

W-2 status

Must perform administrative duties, including answering phones and responding to general email inquiries

Must be willing to place "for rent" and directional signs

Data entry skills required to complete contracts and maintain transaction files

Strong organizational skills required to maintain calendars and arrange appointments

Must be in the office from 9 am until 5 pm Monday-Friday

Is this an appropriate ad for an unlicensed, salaried assistant? Why or why not?

c. *Assistant Wanted:*

1099-status - monthly pay based on lease volume

Must be able to show rentals to prospective tenants

Data entry skills required to complete contracts and maintain transaction files

Strong accounting skills required for maintenance of property funds, including rents, and security deposits

Must be in the office from 9 am until 5 pm Monday/Wednesday/Friday.

Is this an appropriate ad for an unlicensed, salaried assistant? Why or why not?

2. Sarah Mills, broker, has a written agency agreement with an owner to manage the owner's apartment complex. Sarah has hired Phillip as a W-2 employee to act as a leasing agent. Phillip does not have a real estate license.

a. In the property management agreement, the owner has authorized Sarah to negotiate with tenants based on the following schedule:

- 1-bedroom units: \$800-\$1000 per month
- 2-bedroom units: \$1000-\$1200 per month
- 3-bedroom units: \$1200-\$1400 per month

Sarah provides the schedule to Phillip. She tells Phillip to advertise the rates as \$1000, \$1200, and \$1400 respectively for the 1, 2, and 3 bedroom units, but that he can negotiate with prospective tenants within the stated ranges.

Is this legal? Why or why not? _____

b. While showing one of the units, a prospective tenant who is Hispanic asks Phillip whether the complex has many Hispanic families. Phillip replies that yes, there are many Hispanic families in the complex.

Is Phillip's answer appropriate? Why or why not? _____

Will Sarah be held accountable for Phillip's statements? _____

c. Sarah asks Phillip to place ads for available units in various local publications and to keep the complex website updated with current property data.

Is this legal? Why or why not? _____

ANSWERS TO DISCUSSION QUESTIONS

For Discussion on page 83

Sarah Mills, broker, has a written agency agreement with an owner to manage the owner's apartment complex. Sarah has hired Phillip as a W-2 employee to act as a leasing agent. Phillip does not have a real estate license.

- a. May Phillip legally show units in the complex to prospective tenants?

Answer: Yes

- b. May Phillip legally tell prospective tenants the rent rates for the units?

Answer: Yes

- c. One afternoon, Phillip shows a three-bedroom unit to a prospective tenant. When Phillip tells the tenant that the rent will be \$1700 per month, the tenant says, "That's a little too high for me, but I know I can handle \$1500 per month. Is that possible?" Phillip knows that the owner has accepted \$1500 in the past.

What should he say to the prospective tenant?

Answer: I am not authorized to negotiate rent rates, but I'll be happy to connect you with the broker to discuss the issue.

For Discussion on pages 87-88

1. Review each of the following job descriptions. For each description, decide whether it is an appropriate ad for an unlicensed, salaried assistant. Explain why or why not.

- a. Assistant Wanted:

W-2 status

Must be willing to place "For Rent" and directional signs

Must be able to communicate with property owners regarding variations in lease terms

Must be able to assist in completing leases and maintaining transaction files

Must be in the office from 9 am until 5 pm Monday-Friday

Is this an appropriate ad for an unlicensed, salaried assistant? Why or why not?

Answer: No, because an unlicensed assistant should not be communicating directly with owners regarding variations in lease terms.

- b. Assistant Wanted:

W-2 status

Must perform administrative duties, including answering phones and responding to general email inquiries

Must be willing to place "for rent" and directional signs

Data entry skills required to complete contracts and maintain transaction files

Strong organizational skills required to maintain calendars and arrange appointments

Must be in the office from 9 am until 5 pm Monday-Friday

Is this an appropriate ad for an unlicensed, salaried assistant? Why or why not?

Answer: Yes, because the assistant will be a W-2 employee and will be performing only non-brokerage tasks.

- c. *Assistant Wanted:*
1099-status - monthly pay based on lease volume
Must be able to show rentals to prospective tenants
Data entry skills required to complete contracts and maintain transaction files
Strong accounting skills required for maintenance of property funds, including rents, and security deposits
Must be in the office from 9 am until 5 pm Monday/Wednesday/Friday.

Is this an appropriate ad for an unlicensed, salaried assistant? Why or why not?

Answer: No, because an unlicensed assistant cannot have 1099 status or be compensated based on lease volume.

2. Sarah Mills, broker, has a written agency agreement with an owner to manage the owner's apartment complex. Sarah has hired Phillip as a W-2 employee to act as a leasing agent. Phillip does not have a real estate license.

- a. In the property management agreement, the owner has authorized Sarah to negotiate with tenants based on the following schedule:
- 1-bedroom units: \$800-\$1000 per month
 - 2-bedroom units: \$1000-\$1200 per month
 - 3-bedroom units: \$1200-\$1400 per month

Sarah provides the schedule to Phillip. She tells Phillip to advertise the rates as \$1000, \$1200, and \$1400 respectively for the 1, 2, and 3 bedroom units, but that he can negotiate with prospective tenants within the stated ranges.

Is this legal? Why or why not?

Answer: No, because an unlicensed salaried assistant should not be negotiating with prospective tenants.

Note that GS 93A-2(c)(6) does include a special provision regarding vacation rentals, as follows:

"...in a vacation rental transaction as defined by G.S. 42A-4(6), the employee may offer a prospective tenant a rental price and term from a schedule setting forth prices and terms and the conditions and limitations under which they may be offered. The schedule shall be written and provided by the employee's employing broker with the written authority of the landlord."

- b. While showing one of the units, a prospective tenant who is Hispanic asks Phillip whether the complex has many Hispanic families. Phillip replies that yes, there are many Hispanic families in the complex.

Is Phillip's answer appropriate? Why or why not?

Answer: No, because his statement violates the Fair Housing Act.

Will Sarah be held accountable for Phillip's statements?

Answer: It is likely.

- c. Sarah asks Phillip to place ads for available units in various local publications and to keep the complex website updated with current property data.

Is this legal? Why or why not?

Answer: No, because advertising is an act that should be performed by a licensee.