



Personal Assistants- Who pays & Who Doesn't **A condensed policy overview**

Kimberly R. Pontius – Aspire North REALTORS® CEO

Since the day I began my role at the association this personal assistant conversation has been a cyclical topic of conversation that pops up every few years. I attribute this to several different causes first among them the attrition of agents and brokers and the influx of new agents and brokers, but disinformation or lack of knowledge ranks right up there too.

Article X of the Aspire North REALTORS® Bylaws addresses the “dues formula” and reflects the language of the NAR model language regarding the same topic. There is a link to a page on NAR’s website with the tools we use at Aspire North for dues and dues notification.
<https://www.nar.realtor/sites/default/files/handouts-and-brochures/2011/migration-undated/dues-enforcement-kit-article-x-section-2.pdf>

NAR also passed a policy statement many years ago...“at the 1972 Annual Convention, the National Association of REALTORS® Delegate Body approved what’s now commonly referred to as the “designated REALTOR® dues formula.” The formula was carefully crafted to ensure fairness by basing member dues on the number of individuals licensed with REALTORS® principals (known as “designated REALTORS®”), or licensed with brokers who are, in turn, themselves licensed with designated REALTORS®. The formula acknowledges that the benefits of REALTOR® membership at the local, state and national levels accrue not only to designated REALTORS® but to all licensees in REALTORS®’ firms as well.” Here is a link to that information:
<https://www.nar.realtor/about-nar/policies/the-realtor-s-dues-formula-for-second-firms>

Simply stated, if a personal assistant who works in the Designated REALTOR®/Broker’s firm that is a member of the REALTOR® association, *maintains an active real estate license*, then said personal assistant shall be added to the dues billing formula. In the case of our association which practices broker billing, not agent billing, this means that the licensed personal assistant’s dues will be added to the annual dues invoice received by the Designated REALTOR®/broker or for any firm with more than one principal, only one of those principals are designated by the firm as a “Designated REALTOR®.”

How the Designated REALTOR®/broker chooses to handle that dues amount is an internal matter between the personal assistant and/or the agent or Designated REALTOR®/broker who may use a personal assistant.





NAR believes that it is important to emphasize that no one is required to become a REALTOR® member. The fact that the Designated REALTOR® pays dues on behalf of a licensee under the dues formula does not make that licensee a REALTOR® member. In other words, all licensees in a firm are not necessarily REALTORS® but rather, the Designated REALTOR® is required to pay dues on behalf of all licensees within the firm. A licensee must actually join to become a REALTOR® member.

Essentially, with limited exception a licensed personal assistant shall become a full REALTOR® member and is entitled to all of the benefits of a REALTOR® at the local, state and national level.

Over the last few months there has been a lot of buzz about licensed personal assistants operating in the capacity of a REALTOR®, but it seems they are not registered with the association as a member. Why? Because somewhere along the line some agents and brokers were operating under the premise that if the PA's license was hanging in escrow with a holding company this somehow exonerated them from needing to be a member.

Simply put, this is an incorrect assumption.

Aspire North has identified slightly above one hundred personal assistants, both licensed and unlicensed, operating in our association. To be clear the State of Michigan and not Aspire North is responsible for policing unlicensed activity.

We show seventy-three of these personal assistants are operating in a correct manner and the balance are in violation of the dues formula rules. Please note that beginning June 1, 2020 Aspire North shall be notifying those violating the dues formula rules and given a brief period to set things straight. Those found to be continuing with the violation shall be subject to actions of enforcement by this board.

Now, if you have a licensed personal assistant you may contact the Membership Director at the Aspire North office and correct this oversight and then you can stop reading this rather long article. However, if you need more information then I invite you to read on.

Over the last several months the Aspire North Membership Director and I have been reviewing information and speaking with Michigan REALTORS® and the National Association of REALTORS® to gain a full understanding of this topic. I'll admit it is confusing because multiple terms have been used to identify the role of what is commonly called a "personal assistant" across many governing documents. Perhaps a couple of simple scenarios may help with this discussion.



Scenario #1

A relatively new agent finally gets their business model cranking and they realize they need some help. Besides all of the office duties they find that they have days when they need to be in multiple places at the same time. Why? Because there are a lot of duties, they have that early on they did not realize were duties of a REALTOR®. So, this REALTOR® decides to engage the help and assistance of their spouse, mother, father, a sibling, an older child, a good friend, a second cousin twice removed and so on.

Catastrophes averted; correct? Well, perhaps not. Based on some of my colleague's research here is this language from Michigan's regulatory body:

Legal/Regulatory Action: Guidelines (formal action)

*The Michigan Bureau of Professional Regulation (BOPR) explored the issues and options for resolution and to consider possible changes in the administrative rules. MR has also published two articles (one of which was approved by the Licensing Administrator for real estate) on the subject of "Do's and Don'ts for unlicensed assistants." (Updated on May 2012) According to the BOPR, unlicensed assistants **may not** do the following:*

- 1. Independently show property to prospects*
- 2. Solicit listings or other business through use of a telephone*
- 3. Hold open houses for REALTORS®*
- 4. Answer any questions relating to title insurance, financing, or closing*
- 5. Provide information to the public in addition to any information set forth in printed and prepared written promotional material that has been distributed to the public*
- 6. Have their names printed on cards or otherwise hold themselves out as agents for a REALTOR®*
- 7. An amendment to the license law also prohibits sharing or paying a fee, commission, or valuable consideration to a person not licensed.*

Here is a link you may also find helpful for State Statutes and Regulations.

<https://www.nar.realtor/being-a-realtor/personal-assistants/state-statutes-and-regulations-for-unlicensed-assistants>

Essentially, an unlicensed assistant can be a godsend in many ways but at the association we regularly receive complaints about unlicensed assistants performing these various duties listed above. When such a circumstance is brought to the association's attention the very first thing we'll do is check to see if in fact the person in question has a real estate license with the State of Michigan.



Should no license be found with the State the association staff will notify the personal assistant and the broker of their inappropriate action(s) and that these duties or responsibilities must terminate immediately or there will be fines and/or other sanctions brought forward after discovery of further such activities, complaints and review. The association takes this breach of protocol very seriously. An individual acting in the capacity of a REALTOR® but who is not in fact a REALTOR® is damaging to our collective brand and perhaps reputation.

Scenario #2

A Designated REALTOR® (DR) has an agent that for whatever reason wants to assume a more administrative role in the firm. The DR decides to place the agents license in their holding company which is likely a separate legal business entity set up for just such activity. Perhaps the broker is a partner with others in this holding company. Once the license is moved and the REALTOR®, the former sales agent, is placed at on a desk in the brokerage or perhaps a property management company and this person arbitrarily is removed from the dues invoice because they no longer wish to pay the local, state and national dues. MLS access may be dropped too but this is another kettle of fish that needs to be considered a bit further along.

While this path is somewhat of a common action it seems that many of these administrative folks want to keep their future real estate sales options open. This is understandable but removal of the individual from the dues formula is *not an option* unless the individual relinquishes their license to the state or places their License with an independent repository.

If a license is on file, the association WILL add this person to the dues billing formula immediately notifying the broker of such a change. Aspire North will also notify the personal assistant and let them know that they'll likely be forwarded the charge for membership as a REALTOR® by their broker as the DR has no obligation to pay this fee without the expectation of being reimbursed. A license hanging in escrow in a holding company with direct or indirect ownership interest with said Brokerage *does not* change this status, UNLESS that holding company is an independent repository with NO connection to the personal assistants' broker. In other words, if the Designated REALTOR®/broker to which the personal assistant is connected has ANY direct/indirect interest in the company where the license is held no waiver of the due's fees will be permitted.

Simply put the holding company strategy not only does not work as a dues savings strategy, but also it is a violation of license law. A salesperson cannot have his/her license in one entity and perform licensed activities through another company. A real estate salesperson must be supervised by, and paid by, the firm through which he/she is licensed. The holding





company model will also create insurance coverage issues which is why holding companies typically require all of its escrowed licensees to sign contracts whereby they agree not to perform licensed activities for anyone anywhere.

Another area of discussion when it comes to the due's formula is that of property management companies owned by REALTOR brokers.

If one looks at the Aspire North bylaws language in Article X Section (b) this falls into a similar category of the direct/indirect ownership constraint.

(b) A REALTOR® with a direct or indirect ownership interest in an entity engaged exclusively in soliciting and/or referring clients and customers to the REALTOR® for consideration on a substantially exclusive basis shall annually file with Aspire North on a form approved by Aspire North a list of the licensees affiliated with that entity and shall certify that all of the licensees affiliated with the entity are solely engaged in referring clients and customers and are not engaged in listing, selling, leasing, managing, counseling, or appraising real property. The individuals disclosed on such form shall not be deemed to be licensed with the REALTOR® filing the form for purposes of this section and shall not be included in calculating the annual dues of the designated REALTOR®. The exemption for any licensee included on the certification form shall automatically be revoked upon the individual being engaged in real estate licensed activities (listing, selling, leasing, renting, managing, counseling, or appraising real property) other than referrals, and dues for the current fiscal year shall be payable.

The topic of personal assistants has some variations but here are a few simple recommendations to help Aspire North members alleviate complications.

1. If the personal assistant is licensed and works with a Designated REALTOR® who is a member of Aspire North then they will be added to the dues formula which calculates local, state and national dues. They shall be considered a full REALTOR® member.
2. If the personal assistant has no real estate license, then they will not be included in the dues calculation, but they must veer away from those duties associated with being a REALTOR.
3. If the personal assistant has a license but it is being held in a holding company or a property management company to which their broker is connected in any way, well then see #1.





There are many more materials on this topic some of which were used to research this article. Here are a couple of links of value that can be found on Michigan REALTORS website.

UNLICENSED ASSISTANTS PRIMER

<https://www.mirealtors.com/Portals/0/Documents/UnlicensedAssistantsPrimer17.pdf>

Michigan Realtors® October 2017 PERSONAL ASSISTANTS – EMPLOYEES OR INDEPENDENT CONTRACTORS?

https://mirealtors.com/Portals/0/Documents/LOTL_PA217.pdf

Another great article was published on November 8, 2016 by Michigan REALTORS titled QUESTIONS ON THE REALTOR DUES FORMULA to which I have not found an active link but will get the .PDF I have it uploaded on the aspirenorthrealtors.com website under the Members Only portal folder called Publications and Documents.

Again, I'll mention that a current search of our Aspire North records have indicated several personal assistants that are licensed but are not paying the appropriate dues. As we begin a new calendar year Aspire North staff will be notifying these personal assistants and their Designated REALTORS® that they will be added to the dues formula starting June 1, 2020. We will prorate the dues fee accordingly but **no** extensions for payment will be permitted as these personal assistants have been operating inappropriately up until now.

The only recourse would be for these individuals to surrender their license to the state or move it to a holding company (Limited Function Referral Organization (LFRO) with no direct/indirect relationship with their Designated REALTOR®/broker. Either way the personal assistant will be required to notify their Designated REALTOR®/broker and the Aspire North office of this action in writing before January 31, 2020 and they must not be found operating as, or representing themselves as a REALTOR®.

Some members have stated that the cost to the licensed personal assistant is burdensome based on the rate of pay that many personal assistants earn. Remember, these fees do not impact *unlicensed* personal assistants.

When hiring a personal assistant, it might be an incentive for the broker to offer to offset these fees should the applicant have a real estate license with the State. Frankly, many of the associations educational programs today have ConEd units associated with them as do our popular Lunch and Learn activities. These CE units will be necessary for the licensed personal assistant to maintain their license.





Furthermore, our associations social events and support services are available to our dues paying members as is MLS access. These member benefits are not available to a non-member such as an unlicensed personal assistant.

On the subject of the MLS and a licensed personal assistant being required to pay the MLS fees, a review of last years NAR Policy 7.42 and 7.43 language it would appear that this is also required. *"At a minimum, each Licensee will need to subscribe to at least one multiple listing service where their principal broker participates."* However, the MLS does have the waiver process that allows a licensee and their broker to waive the right to the MLS for the licensee. Aspire North does have the NGLRMLS waiver form which states such a waiver is requested, freeing the personal assistant from needing to pay these fees. A cautionary comment here though is that any violation of this waiver will result in a \$5,000 fine and expulsion from the service. This penalty may also impact the Designated REALTOR®/broker who validates such a waiver as this association operates on a broker billing system. Care that a licensed personal assistant doesn't fall into this circumstance falls squarely on their Designated REALTOR®/broker who shall be responsible for them.

In summary there are four determinations to be made for a personal assistant to operate under a Designated REALTOR®/broker in Aspire North REALTORS®.

1. An **unlicensed** personal assistant is not required to pay anything, but they cannot act in any capacity of a REALTOR® as stated by REALTOR® policy and Michigan regulatory guidelines.
2. A **licensed** personal assistant shall be a dues paying member in a REALTOR® association in the state of Michigan in which their Designated REALTOR®/broker also has membership and is subject to all of the dues and fees of that association.
3. The **licensed** personal assistant may waive their participation in the MLS if they file the required waiver, with their Designated REALTOR®/brokers signature, with the multiple listing service, subject to the fines and penalties if violated.
4. A **licensed** personal assistant can surrender their license to the state to become an unlicensed personal assistant or they can place their license in a holding company in which their Designated REALTOR®/broker has no direct or indirect position or involvement.
5. To be clear if a salesperson **opts to surrender** their license to the State, he/she can no longer perform licensed activities.

I hope this document helps clarify our associations position on the use of personal assistants.

We truly value these administrative folks and we know how valuable they are to our members. If your personal assistant has a license then I'd urge you to consider perhaps subsidizing their membership as this association can provide much guidance, benefit and assistance to them as a member that should in turn reap a great return of investment for their firm.

