



TRAINING TIP OF THE WEEK

Can you change that contract?

In a 2017 Wyoming case, a real estate agent was found to have engaged in the unauthorized practice of law for merely removing inapplicable provisions of a state association's form. As evidenced in this case, and depending on state law, even minor modifications to a form agreement may constitute the unauthorized practice of law.

What exactly constitutes the unauthorized practice of law varies from state to state. Some states even have specific statutes governing what actions real estate agents may undertake during transactions. It's crucial for real estate professionals to be familiar with their state's laws, and applicable rules and regulations, in order to avoid crossing the line. And beyond state law, Article 13 of the REALTORS® Code of Ethics prohibits the unauthorized practice of law and specifically requires NAR members to recommend using legal counsel when the interests of any party to the transaction require it. REALTORS® should be aware of this ethical obligation when navigating their way through this issue.

Protect yourself by incorporating a few key practices into your business. These practices will help you avoid inadvertently participating in the un-authorized practice of law and ending up with either an ethics violation or a lawsuit. **Don't Draft, Edit, or Interpret**

First, never create your own legal agreements for clients. Instead, use the form agreements provided by state and local REALTOR® associations. These forms are often provided as a member benefit.

Second, even when using a form agreement, be sure to avoid editing the agreement in a substantive way. Limit your editing to filling in nonlegal, factual provisions of the agreement, such as names, dates, locations, and party descriptions. Should a transaction require edits beyond just filling in factual information, refer clients to a real estate attorney. This is not only your ethical obligation as a REALTOR® but taking any substantive edits upon yourself could constitute the unauthorized practice of law.

Third, don't charge a fee for preparing any of the legal agreements or forms. Numerous states have found that preparing legal documents constitutes the unauthorized practice of law.

And finally, don't try to interpret legal contract language. The policy reasons behind the unauthorized practice of law are clear. Prior to providing legal advice, individuals must meet a number of requirements, including graduating from law school, passing the state bar exam, and obtaining a license to practice law. These requirements ensure that only people with sufficient knowledge and skills may represent the public in legal matters.

Protecting You—and Your Clients

As transactions become more complex, it's not uncommon for clients to ask real estate practitioners to interpret a contract. Resist the temptation. The best answer, and the ethical obligation under the Code of Ethics, is to direct clients to an attorney. The unauthorized practice of law can result in fines, suspension, and even revocation of your license. Help your clients by recommending they consult an attorney in appropriate circumstances.

By following these tips, you're not only helping protect yourself against potential legal and ethical trouble but also best serving your clients by encouraging them to get the assistance of a legal expert for the advice they need to complete a successful transaction.

This is a Publication of the Cache Valley Association of REALTORS®

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