

REAL ESTATE COMMISSION: No license required for person merely soliciting the listing of real estate.



September 17, 1947

Honorable J. W. Hobbs, Secretary
Missouri Real Estate Commission
222 Monroe Street
Jefferson City, Missouri

Dear Mr. Hobbs:

This is in answer to your request for an opinion as to whether a person who solely solicits the listing of real estate in Missouri for a licensed broker must secure a license as a real estate broker or salesman, as provided under Section 8300.1, Mo. R.S.A., Laws of 1941, page 425.

The applicable statutes to be considered in connection with the above question are as follows:

"Section 8300.1 Real estate brokers and salesmen--license required

"After January 1, 1942, it shall be unlawful for any person, copartnership, association or corporation, foreign or domestic, to act as a real estate broker or real estate salesman, or to advertise or assume to act as such without a license first procured from the Missouri Real Estate Commission. Laws 1941, p. 425, Sec. 1."

"Section 8300.3 Definitions--application of act

"A real estate broker is any person, copartnership association or corporation, foreign or domestic, who advertises, claims to be or holds himself out to the public as a real estate broker or dealer and who for a compensation or valuable consideration, as whole or partial vocation, sells or offers for sale, buys or offers to buy, exchanges or offers to exchange the real estate of others; or who leases or offers to lease, rents or

offers for rent the real estate of others; or who loans money for others or offers to negotiate a loan secured or to be secured by a deed of trust or mortgage on real property. A real estate salesman, within the meaning of this act, is any person, who for a compensation, or valuable consideration becomes associated, either directly or indirectly with a real estate broker to do any of the things above mentioned, as a whole or partial vocation. This act shall not apply to rent collectors or counter clerks employed in the rental department of the office of a real estate broker. This act shall not apply to any person, copartnership, association or corporation who as owner or lessor performs any of the acts aforesaid, with reference to property owned or leased by them, nor to their employees in the regular course of the ownership and management of such property; nor shall this act be construed to include in any way the service rendered by an attorney-at-law in the performance of his duties as such; nor shall this act apply to a receiver, trustee in bankruptcy, administrator, executor, or any person selling real estate under order of any court, nor to a trustee acting under a trust agreement, deed of trust, or will, nor to the regular employees thereof; nor any bank, trust company, building and loan association, insurance company or farm-loan association, organized under the laws of this state or of the United States when engaged in the transaction of business on its own behalf and not for others; nor shall this act apply to any person who does not advertise or hold himself out to the public as a real estate broker or dealer and who might, occasionally, buy or offer to buy, or sell or offer to sell, or rent or lease or offer to rent or lease any real estate, or to loan or offer to loan money secured by real estate. As amended Laws 1945, p. 1422."

We shall scrutinize the statutes involved and the decisions of other courts than Missouri dealing with this subject, as the question has not been covered by the Missouri appellate courts, so as to determine whether a person engaged solely in soliciting the listing of real estate in Missouri for a licensed broker comes within the provisions of our real estate brokers' law.

It is apparent that the statutes were enacted, not to provide revenue, but to provide for registration and regulation of those engaged in the real estate business. The license fee (\$5.00 per year) is so nominal that no other conclusion is tenable. *Koeberle v. Hotchkiss*, 8 Calif. App. (2d) 634, 48 Pac. (2d) 104, 107, states:

"* * * The primary purpose of the Real Estate Brokers' Act was to require real estate brokers and salesmen to be 'honest, truthful and of good reputation.' * * *"

By its inherent nature, real estate business requires confidence in and honesty of those delegated with authority to list, rent, supervise or sell real estate belonging to others. Public criticism of real estate rackets and unscrupulous and unworthy brokers and agents has caused the respectable and reliable real estate brokers and salesmen throughout the land to promote and demand legislative supervision and regulation of those engaged in this business. A casual examination of the statutes of different states discloses that many have enacted real estate brokers' laws which are similar to those of Missouri. While the statutes of the different states vary in some details, yet in general provisions and purposes they are very much alike. Practically all the laws have been enacted, not for revenue, but for supervision and regulation. They require a license of real estate brokers and real estate salesmen, and, like the Missouri law, they give a definition of broker and real estate salesman similar to Section 8300.3, supra.

We must keep constantly in mind that acts creating boards or commissions, with numerous officials and paid employees, complicated legal machinery, and elaborate plans for the purported purpose of regulating businesses and callings, well known and understood by the public, the expenses of which come out of the pockets or earnings of those engaged in the business or calling, should be viewed and examined with diligence to ascertain whether such acts and regulatory measures are designed to safeguard the public welfare, or for other purposes not sanctioned by law and beyond the limitations prescribed by the letter of the constitution and by judicial interpretation. *Schneider v. Duer*, 184 Atl. 914, 917.

Whereas a literal reading of Section §300.3, supra, would include anyone not specifically exempted therein, who, for compensation, was in any manner connected with a transaction involving real estate, as for instance a stenographer in a real estate brokers office who contacted people desiring a listing, we are of the opinion that such is not the intent or meaning of this section. A reading of the statutes regulating real estate brokers makes it apparent they were enacted for the benefit of the public to protect them from dishonest and unscrupulous real estate agents. Such protection of the public is not needed from the casual or remote influence of a stenographer or of a person who introduces a real estate broker to one who may wish to deal with him. Neither the stenographer nor the man who introduces the broker in the examples we have mentioned are active participants in any contract affecting real estate or any liability of the persons entering into such contracts or listings. The dealings which the statutes aim to protect the public in are those which result in legal liabilities between the parties. Nothing the stenographer or the man who introduces the real estate broker does has that effect. This is true, even though the real estate broker contracts to pay the man who introduces him a part of his commission in the event he makes a sale or to pay him a regular salary. *Andersen v. Johnson*, (Utah) 167 A.L.R. 768, 160 Pac. (2d) 725.

CONCLUSION

Therefore, it is the opinion of this department that a person who solely solicits the listing of real estate in Missouri for a licensed broker is not required to be licensed by the Missouri Real Estate Commission.

Respectfully submitted,

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APPROVED:

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