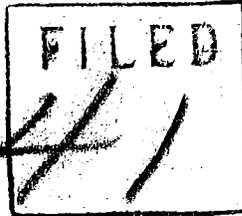


MISSOURI REAL
ESTATE COMMISSION:

A real estate licensee does not jeopardize his license under Section 339.100, Clause 11, RSMo 1949, when he sells houses of a manufacturer, even though that manufacturer is conducting contests, and presenting as prizes, free houses and lots.



December 7, 1956

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

Dear Mr. Hobbs:

This is in answer to your opinion request addressed to this office, dated September 20, 1956, on the following question:

United States Steel Homes, Inc., a manufacturer of prefabricated houses, is currently conducting a nation-wide sales promotion campaign in connection with the construction of subdivisions of their product. The sales promotion campaign works as follows: A builder constructs a subdivision using United States Steel Homes, Inc., houses. One lot and house in that subdivision is set aside by the builder and is given away free by United States Steel Homes, Inc., to a person who is considered by United States Steel Homes, Inc., to have submitted the best entry on what they like best about United States Steel Homes, Inc., houses and why. Will a Missouri real estate licensee be violating Section 339.100, Clause 11, RSMo 1949, if he sells for the builder other houses in that subdivision?

Section 339.100, RSMo 1949, provides in part as follows:

"The commission may upon its own motion, and shall upon written complaint filed by any person, investigate the business transactions of any real estate broker of real

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estate salesman and shall have the power to suspend or revoke any license obtained by false or fraudulent representation or if the licensee is performing or attempting to perform any of the following acts or is deemed to be guilty of:

* * * * *

"(11) Soliciting, selling, or offering for sale real property by offering free lots, or conducting lotteries, or contests, or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real property."

The above section gives to the Missouri Real Estate Commission the power to revoke or suspend any license if the licensee is found guilty of performing any of the acts set out in any of the eleven clauses.

In *Robinson vs. Missouri Real Estate Commission*, 280 S.W. (2d) 138 (1955), the court stated therein that:

"As we have stated the Commission is authorized to revoke a broker's license if he is found guilty of any of the eleven acts set out in Section 10, Laws of 1941, pp. 428-429. * * *" (Sec. 10, Laws 1941, pp. 428-429 is the same as Section 339.100, RSMo 1949.)

Although this case is not in point on the facts, it does point up the fact that for the licensee's license to be revoked under clause 11, Section 339.100, supra, it must be the licensee himself or his salesman acting with his knowledge and consent who performs the acts prohibited therein for the purpose prohibited.

Looking specifically at clause 11 of Section 339.100, supra, we find that a violation of this clause must consist of three elements. A licensee to violate clause 11 of Section 339.100, must:

- (1) Solicit, sell, or offer for sale, real property;

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- (2) By offering free lots, conducting lotteries, or contests, or offering prizes;
- (3) And the purpose for which those free lots or prizes are given, or the lotteries or contests conducted, must be to influence a purchaser, or prospective purchaser, of real property.

All of the above three elements must be present and must have been performed by the licensee before his license can be revoked or suspended by the Commission for violation of Section 339.100, Clause 11, supra. Any two elements without the third will not be enough to constitute a violation of that statute.

In answer to your opinion request it is the opinion of this office that a licensee will not be risking suspension or revocation of his license for violation of Section 339.100, Clause 11, supra, when he sells a house or houses in a subdivision in which is located a free house being offered as the prize in a contest conducted by United States Steel Homes, Inc. The contest here is being sponsored by United States Steel Homes, Inc. That corporation is bearing all the financial expense and carrying out all the administrative details of the contest. That corporation selects the winner and sets out the rules and requirements by which the winner is selected. No licensee is involved in anyway. To be sure, real estate licensees may be benefited to a certain extent by the advertising that arises in connection with the sales campaign and the contest. However, it cannot be said that a licensee is performing the acts prohibited by Section 339.100, Clause 11, and is subject to having his license revoked or suspended merely because he sells a house in a subdivision wherein a house, to be given away in a contest, is located.

A mere reaping of the benefits resulting to him from the contest being conducted by United States Steel Homes, Inc., is not jeopardizing the licensee's license.

CONCLUSION

It is the opinion of this office that for a real estate licensee to have his license revoked or suspended by the Missouri Real Estate Commission for violation of Section 339.100,

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Clause 11, RSMo 1949, the licensee himself must be guilty of performing the act or acts prohibited therein. In the United States Steel Homes, Inc., contest, no licensee is involved.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Richard W. Dahms.

Very truly yours,

John M. Dalton
Attorney General

RWD:bi:rw:hw