

MISSOURI REAL ESTATE

COMMISSION:

Four questions on application, suspension and revocation.

February 25, 1942



Missouri Real Estate Commission
Jefferson City, Missouri

Attention - Mr. J. W. Hobbs, Secretary.

Dear Sir:

Your request of February 16, 1942, requesting an opinion based on four questions involving the granting, suspension and revocation of a license from your Commission, has been received.

Your first question reads as follows:

I

"The Missouri Real Estate Commission Act passed by the Last General Assembly states that the Commission must notify a licensee ten days before a hearing on the revocation of his license. Would you kindly write a legal notification which we can follow for such notices?"

Section 11, Laws of Missouri, 1941, Page 429, reads as follows:

"Application may be denied only after hearing. - The commission may deny an application for a license, or sus-

pend or revoke a license issued, only after a hearing, of which the applicant or licensee affected shall be given at least ten days' written notice specifying the reason for denying the applicant a license, or, in case of suspension or revocation, the offense or offenses of which the licensee is charged. * * "

Under the above partial section the Commission may deny an application for a license, or suspend or revoke a license, only after having given at least ten days' written notice, which should specify the reason for the denial, suspension or revocation. Of course, if a license is granted no notice is required. This notice should be served as provided by law for other services, or by mailing a copy by registered mail to the last known residence or business address of such applicant, or licensee. The Commission in the notice may set the time and place for the hearing. If the notice is to be served on a licensee or applicant who is a salesman, the Commission shall also notify the broker with whom he is associated, or in whose office he is about to enter, by mailing a notice to the broker's last known business address.

It is very important that this notice contain the reason why the application may be denied, or a license already issued may be suspended or revoked. The main reasons for suspension or revocation are set out in Section 10, Laws of Missouri, 1941, Page 428. The other reasons are set out in Section 7, Laws of Missouri, 1941, Page 427.

We are enclosing a form of legal notification which may be served upon the applicant, licensee or broker. This legal notice is drawn to be used in case the Commission believes that the application for a license should be refused. In case the notice required is for the suspension or revocation of license this notice should be changed to read: "Suspension", or, "Revocation"; and should specifically set out the causes for the suspension or revocation, as set out in Section 10 of the Missouri Real Estate Commission Act.

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Your second question reads as follows:

II

"We have a few complaints sent to the Commission against licensees. Could we request your office for a legal form notifying the real estate broker against whom the complaint had been filed and also a form of subpoena for witnesses involved?"

This question is answered by our opinion on your first question. The enclosed notification should be changed to read: "Broker"; and should specifically set out the same causes for suspension or revocation, or, as mentioned in Section 10, of the Missouri Real Estate Commission Act.

We are enclosing a form of subpoena to be used for the witnesses.

Section 11, of the Act, specifically states:

" * * * The commission shall have the power to compel the production of records and papers bearing upon the complaint. The commission shall have the power to subpoena and bring before it any person in this state or take testimony of any such person by deposition with the same fees and mileage and in the same manner as prescribed by law in judicial procedure, before courts of this state in civil cases. * * * The commission shall have the power to

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issue subpoenas under the seal of
the commission and direct the ser-
vice of the same. * * * "

This subpoena can be issued and served by the
sheriff of the county, the same as any other subpoena.

Your third question reads as follows:

III

"What procedure do we follow in the
event an applicant applies for a
license and upon inquiry or through
information on his application we
are informed that he has been in-
dicted, sentence, fined or paroled
or that we are advised by the Prose-
cuting Attorney or Sheriff of his
county that he is not deserving of
a license may we have a legal notifi-
cation from your office that we may
send denying him a license and a
reason?"

This question is covered by our opinion given in your
first question.

Your fourth question reads as follows:

IV

"We have a few applicants whose record
will make it impossible to issue a li-

cense however, the county authorities believe that they will continue to operate as real estate brokers, this of course would be against the law. Will it be necessary that the Commission which has no appropriation, file charges against them in their county? If so, would it be done through your office or does the Prosecuting Attorney's Office of said county have the right to file suit against such persons and would they be compelled to do so upon advise of the Commission?"

Section 1, of the Missouri Real Estate Act, Laws of Missouri, 1941, Page 425, reads as follows:

"License must be procured. - 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."

Section 17, of the same Act, (Laws of Missouri, 1941), Page 431, reads as follows:

"Any person or corporation violating any provision of this act shall be guilty of a misdemeanor, and, if a person, be punished by a fine of not more than \$500 or by imprisonment in the county jail, not exceeding six months, or by both such fine and im-

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prisonment, and if a corporation shall be punished by a fine of not more than \$1,000. Any officer or agent of a corporation, or member or agent of a copartnership or association, who shall personally participate in or be an accessory to any violation of this act, shall be subject to the penalties herein prescribed for individuals. This law shall not be construed to release any person from civil liability or criminal prosecution under the general laws of this state. The commission may cause complaint to be filed for violation of Section 1 of this act in any court of competent jurisdiction, and perform such other act as may be necessary to enforce the provisions hereof."

Under the two above sections, unless a license is obtained, the broker or salesman who continues to act as a real estate broker, or salesman, is guilty of a misdemeanor. The procedure to be followed is the same as in any criminal action. The jurisdiction of the case would be in the county where the sale, or purchase of real estate was contracted by the broker or agent, and if he did not have a license lawfully granted to him, it is the duty of the prosecuting attorney, upon the furnishing of sufficient evidence, to issue a warrant, the same as in other criminal proceedings. You will find that you will be aided in this matter by real estate brokers, or salesmen, who have procured licenses. In this question you also refer to the fact that no appropriation has been made for the Missouri Real Estate Commission, but no fee is required by the prosecuting attorney in the filing of such a criminal charge.

APPROVED:

Respectfully submitted

W. J. BURKE
Assistant Attorney General

ROY McKITTRICK
Attorney General of Missouri

BEFORE THE MISSOURI REAL
ESTATE COMMISSION.

IN THE MATTER OF THE DENIAL
OF APPLICATION FOR LICENSE TO
ACT AS REAL ESTATE

(Salesman or Broker.)

TO:

(Name of Applicant.)

(Residence.)

(Business Address.)

YOU ARE HEREBY NOTIFIED That the Missouri Real Estate
Commission will, at 9 o'clock A. M., on the ___ day of
_____, 19___, or on the next succeeding days,
hold a hearing at _____
(Place designated by Commission.)
in reference to denying your application for a license
as a _____:
(Salesman or Broker.)

That the reason we are notifying you of this hearing
is that you are charged with (set out specifically any
of the charges from "a" to "k", both inclusive, in Sec.
10, of the Missouri Real Estate Commission Act, or, set
out the charge as contained in Sec. 7, of the same Act.)
which is a violation of Par. _____, of Sec. 10, or Sec. 7,
Laws of Missouri, 1941, of the Missouri Real Estate Com-
mission Act.

- (Form of notice continued - Page 2.)

YOU ARE HEREBY REQUESTED to be present at this hearing and show cause why a license to sell real estate should be issued to you in accordance with the Missouri Real Estate Commission Act of the Laws of Missouri, 1941.

(SEAL)

Secretary of Missouri Real
Estate Commission

ATTEST:

Chairman of the Missouri
Real Estate Commission.

SUBPOENA

THE STATE OF MISSOURI,

To _____ GREETING:
(Name of Witness.)

You are hereby commanded, all excuses and delays set aside, that you be and appear before the Missouri Real Estate Commission at _____ (Any place designated by Commission.) on the ____ day of _____, 1942, at the hour of 9 A. M., then and there to testify, and the truth of your knowledge to speak of and concerning a certain matter of controversy pending before the Missouri Real Estate Commission and concerning the application of _____ (Name of Applicant.) for a real estate license to sell real estate as a _____ (Salesman or Broker.) _____ (Books, records, etc.) and this you shall in no wise omit under legal penalty.

(SEAL)

Secretary of Missouri Real Estate Commission.

ATTEST:

Chairman of the Missouri Real Estate Commission.

2.

- Return to appear on reverse side of subpoena -

SHERIFF'S RETURN

Executed this writ in _____ County, Missouri,
as follows, to-wit: _____

_____ Sheriff

_____ Deputy

FEEES: To _____ services, \$ _____

To _____ non est, \$ _____

To _____ miles, \$ _____