

REAL ESTATE COMMISSION: Licensed real estate agent cannot pay unlicensed broker commissions to secure prospective customers for money loans secured by real estate.

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May 26, 1943



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

Dear Mr. Hobbs:

This is in reply to your request for an official opinion, under date of May 24, 1943, which request reads as follows:

"May the Commission request an opinion on the following matters?

"Do persons, banks, trust companies, building and loan associations, insurance companies, farm loan associations and other associations, or corporations, who loan money for others, who hold a Missouri Real Estate license, violate the Missouri Real Estate Commission Act when they actually pay commission to brokers who hold no Missouri Real Estate Commission license, where the loan is secured by a mortgage, or deed of trust upon real estate and also where no commission is paid direct to said persons who sometimes agree to assume the costs of title examination?"

The sections of the Missouri Real Estate Commission Act which are applicable to this question are sections 3 and 15, Laws of Missouri, 1941, page 425.

Section 3 of the Missouri Real Estate Act partially reads as follows:

"A real estate broker is any person, copartnership association or corporation, foreign or domestic, \* \* \* \* \*

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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. \* \* \* \* This act shall not apply to \* \* \* \* 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 licensed 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."

Under the above two sections there is no question but that a money lender who loans money of others, under a Missouri Real Estate license, and who pays commissions direct to brokers who obtain prospective customers for the loan of money, or for sales of loans secured by a mortgage or deed of trust upon real estate, which have already been consummated, violates the Act when the broker does not have a Missouri Real Estate Commission license.

The latter part of your request in reference to the assuming of the costs of title examination is a question of fact in each individual case. If the money lender is loaning the money of others direct to the owner of the real estate, the money lender is not illegally assuming the cost of title examination, for the reason that it is for his client's protection. It is true that some persons and associations in the city of St. Louis who are loaning money on real estate require written application for loans in which the borrower agrees to pay the costs of title examination and other expenses connected with the loan. If the money lender is selling a mortgage or deed of trust which is secured by real estate and which deed of trust or mortgage has been made and the money lender decides to sell the loan through a broker who has no real estate license, it is a question of fact whether or not he is attempting to pay indirectly the unlicensed broker when he agrees to pay the costs of title examina-

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tion of the loan already made.

The Act prohibits a licensed real estate broker from paying any part of a fee, commission, or other compensation to any person for any service rendered by such person, which person is not a licensed real estate salesman, in negotiating any loan upon any real estate.

It is true that when the costs of title examination and other expenses are assumed by the real estate agent, he may, or may not, be attempting to illegally pay a commission to an unlicensed broker. It all becomes a question of fact in each individual case and the licensed real estate dealer cannot indirectly do anything that is directly forbidden by the Act.

#### CONCLUSION

It is, therefore, the opinion of this department that persons, banks, trust companies, building and loan associations, insurance companies, farm loan associations and other associations or corporations, who loan money for others, and who hold a Missouri Real Estate license, violate the Act when they actually pay commissions directly to a broker who holds no Missouri Real Estate license.

It is further the opinion of this department that it is a question of fact in each individual case, if the licensed broker assumes the costs of title examinations and other expenses connected with the loan of money on real estate, where the broker who handles the transaction is not a licensed real estate broker as to whether or not he is indirectly attempting to violate the Real Estate Commission Act.

APPROVED BY:

Respectfully submitted

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ROY McKITTRICK  
Attorney General

W. J. BURKE  
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