

REAL ESTATE BROKERAGE
BUSINESS LICENSE:
NONLICENSED COPARTNER
MAY BE IN SUCH BUSINESS:
COPARTNER MAY SHARE IN
PROFITS OF BUSINESS:

Copartnership real estate brokerage
business may be licensed when one
of the copartners does not hold real
estate broker's license. Where he
does not actively participate in
such business, such copartner may
share in profits of such business.

November 21, 1951

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



Dear Mr. Hobbs:

Your recent letter, enclosing a letter of Commissioner Stephens', requesting an opinion of this office, has been assigned to the writer for answer. The pertinent part of Commissioner Stephens' letter is as follows:

"I have received an inquiry from a local abstracter as to whether or not he, without a license, would be considered in violation of the Real Estate License Act (Senate Bill No. 87) if he were to assume a silent partnership in a business with a real estate broker.

"He tells me that he will advance certain monies to this real estate broker and will participate in the annual profits, if any, only. He states that he will not do any of the things mentioned in Section 3 of the Act and that he will not have anything to do with the managership or policy of such brokers business.

"I do not believe that he will be violating Section 2 and 3 of the Act; however Section 15 of the Act reads 'No real estate broker shall pay any part of a fee, commission or other compensation received by the broker to any person for any service rendered by such person to the broker in buying, selling, exchanging, leasing, running or negotiating a loan upon any real estate, unless such a person is a licensed real estate salesman regularly associated with such broker, or a licensed real estate broker, or a person regularly engaged in the real estate brokerage business outside the State of Missouri.'"

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Section 339.030, RSMo 1949, (Section 2 of the Act) reads as follows:

"A corporation, copartnership or association shall be granted a license when individual licenses have been issued to every member or officer of such copartnership, association or corporation who 'actively' participates in its brokerage business, and to every person who acts as a salesman for such copartnership, association or corporation." (Underscoring and quotation marks ours.)

We believe that the above-setout section of the statute by its terms allows and looks with favor upon the formation of corporations, copartnerships and associations for the carrying on of real estate brokerage business where one of the owners is not "actively" participating in the brokerage business and is not licensed. We are, therefore, of the opinion that a person not having a real estate brokers or salesman's license and not "actively" participating in the real estate brokerage of a real estate brokerage firm can be a copartner in such firm.

Section 339.010, RSMo 1949, (Section 3 of the Act) reads in part as follows:

"1. 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."

The above-setout part of this section states that "a person" or business firm which is either a copartnership, association or corporation is a "real estate broker" when it does these things delineated therein. A license can be issued to any of the above

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types of real estate brokerage firm when the terms set out in Section 339.030, supra, are complied with.

Section 339.150, RSMo 1949 (Sec. 15 of the Act) reads as follows:

"No real estate broker shall pay any part of a fee, commission or other compensation received by the broker to any person for any service rendered by such person to the broker in buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate, unless such a person is a licensed real estate salesman regularly associated with such broker, or a licensed real estate broker, or a person regularly engaged in the real estate brokerage business outside of the state of Missouri."

We do not believe this section applies to the proposition set forth in your letter, that is whether or not the silent partner, who will not "actively" participate in the real estate brokerage business, which will, under the terms you set forth, be a copartnership, be able to receive his share of the profits under the partnership agreement. He can, we believe, receive his share of the profits as the "partnership firm" will be the licensed real estate brokerage business.

CONCLUSION

It is the opinion of this department that a license may be issued to a real estate brokerage business in which a copartner (silent) does not have a real estate broker's license and does not "actively" participate in the real estate brokerage business; and that such partner may share in the profits of the copartnership business.

Respectfully submitted,

A. BERTRAM ELAM
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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