

REAL ESTATE
COMMISSION:

Licensee may pay non-resident who regularly
engages in the brokerage business.

June 7, 1943



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

Dear Sir:

This is in reply to your letter of June 2, 1943, in which you request an opinion as follows:

"May we have the opinion of your office on Section 15 of the License Law.

"Can a licensee pay a commission to anyone outside the State of Missouri who is regularly in the brokerage business and who sends the licensee a client?

"The first part of Section 15 prohibits a broker from splitting a commission unless it is with a licensed broker. Is there an exception in the case of persons regularly engaged in the brokerage business but who are doing business outside of the State of Missouri?

"Does a non-resident who is regularly engaged in the brokerage business in another state have to apply and receive a license from the Missouri Real Estate Commission before he can participate in any part of a fee or receive same from a Missouri Licensee?"

Section 15 of the Missouri Real Estate Commission Act, Laws of Missouri, 1941, page 430, 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."

Under the above section there are only three instances in which a real estate broker can pay any part of a fee, commission, or other compensation to any person for services rendered by such person to the broker in real estate or loan negotiations; First, the payee must be a person who is licensed real estate salesman, regularly associated with the payor; second, the payee must be a licensed real estate broker; and third the payee must be a person regularly engaged in the real estate brokerage business outside of the State of Missouri.

Ordinarily the word "or" in a statute is used as a disjunctive and marks the alternative generally corresponding to "either." It was so held in the case of *Dodd v. Independence Stove & Furnace Co.*, 51 S. W. (2d) 114, 1. c. 118, where the court said:

"The construction of the statute contended for by appellant would make 'or' mean substantially, 'that is,' in other words 'noxious, that is to say, poisonous' dusts, thus making the descriptive adjectives 'noxious' and 'poisonous' in effect synonymous. While the word 'or' may sometimes be so used, its ordinary use is as a disjunctive 'that marks an alternative generally corresponding to "either," as "either this or that."

46 C. J. 1124, Sec. 1. See, also; State v. Combs (Mo. Sup.) 273 S. W. 1037, 1039; Case Threshing Machine Co. v. Watson, 122 Tenn. 148, 122 S. W. 86, 974. Appellant's construction would render one of said descriptive adjectives practically superfluous, and the Legislature will not be presumed to have intended using superfluous or meaningless words in a statute."

Under the above holding the licensed real estate broker who is the payor can only pay payee's part of his commission who can qualify under either of the three definitions above set out.

Section 15 does not set out that the person regularly engaged in the real estate brokerage business outside of the state of Missouri should be a resident of the state where he is regularly engaged in the brokerage business.

Courts cannot interpolate in a statute where the omission is not plainly indicated. It was so held in the case of Betz v. Columbia Telephone Co., 24 S. W. (2d) 224, 1. c. 228, 224 Mo. App. 1004, where the court said:

"* * * * Intent of the Legislature must be ascertained and given effect as expressed in the statute. Rogers Foundry Co. v. Squires, 221 Mo. App. 17, 297 S. W. 470. Courts can not interpolate in a statute where omission is not plainly indicated. State ex rel. Cobb v. Thompson (Mo. Sup.) 5 S. W. (2d) 57. To get at the true meaning of the language in a statute the court must look at the whole purpose of the act, the law as it was before the enactment, and the change in the law intended to be made. * * * * *"

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Under the above holding it is also shown that Section 15 cannot be construed to the effect that the person regularly engaged in the brokerage business must be a resident of this state or a resident of the state in which he is regularly engaged in the real estate brokerage business.

CONCLUSION

It is, therefore, the opinion of this department that a licensee under the Missouri Real Estate Commission Act in this state can pay a commission or part of a commission to anyone outside the state of Missouri who is regularly engaged in the brokerage business, and who sends the licensee a client.

It is further the opinion of this department that a non-resident who is regularly engaged in the brokerage business in another state need not apply and receive a license from the Missouri Real Estate Commission before he can participate in any part of a fee or receive the same from a Missouri licensee.

Respectfully submitted

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APPROVED BY:

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