

MAINE STATE LEGISLATURE

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April 28, 1967

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Real Estate Commission

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Multiple Listing Service of Brokers.

FACTS:

A recognized multiple listing service may be defined as an arrangement whereby certain brokers or a group of brokers systematically place their individual listings to the attention of other brokers, who are members of the listing service, so that if a sale results, a commission is divided by the listing broker, the selling broker, and the multiple listing service on a pre-arranged basis.

For example, A, B, C, D, E, F, G and H as brokers, form a listing service. A lists certain realty with all of the others. The commission on the sale is established to be \$100.00 and it is provided that 6% of the commission shall go to the listing service and the remainder to be evenly divided between the listing broker and the selling broker. Broker E sells the real estate. E will receive \$47.00 of the \$100.00 commission, A, the listing broker will receive \$47.00, and the multiple listing service of which A, B, C, D, E, F, G and H are members, will receive \$6.00.

ISSUE:

Is an incorporated or unincorporated multiple listing service established by brokers subject to licensure?

ANSWER:

No.

32 M.R.S.A. § 4102 provides that:

"It shall be unlawful for any person, partnership, association or corporation to act as a real estate broker or real estate salesman, or to advertise or assume to act as such real estate broker or real estate salesman, without a license issued by the Commission."

If the association or corporation formed as a multiple listing service by various brokers acts independently as a real estate broker then such an organization would obviously be subject to licensure. The definition of a real estate broker is set forth in statutory language in 32 M.R.S.A. § 4001 (2) and reads as follows:

"Real Estate Broker. A 'real estate broker' is any person, firm, partnership, association or corporation who for a compensation or valuable consideration sells or offers for sale, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, or who leases or offers to lease, or rents or offers for rent or lists or offers to list for sale, lease or rent, any real estate or the improvements thereon for others, as a whole or partial vocation."
(Emphasis supplied)

A multiple listing service, whether incorporated or not, is merely a profit-sharing contract through which commissions, derived from the sale of real estate by duly licensed brokers, are distributed or shared among said brokers. The service is strictly a contractual creature whereby brokers agree to share profits.

A listing service is different from a corporation, partnership, or association which is formed to actually transact real estate business. A listing service, composed of brokers, even though incorporated, is not a legal entity distinct from the brokers who belong to said service. The service itself does not list realty for sale but is merely an exchange service through which various member brokers exchange listings with one another.

The multiple listing service per se is not engaged in the business of a real estate broker as that term is defined in 32 M.R.S.A. § 4001 (2) quoted above.

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A license is imposed upon real estate brokers as a valid exercise of the police power of the State to regulate those who engage in brokerage activities. Licensure is validly imposed upon those who list or offer to list for sale real estate, to wit: the members of the multiple listing service. Licensure cannot be validly imposed as a tax merely upon the profit-sharing agreements of duly licensed brokers however.

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