

MAINE STATE LEGISLATURE

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June 2, 1975

Paul A. Sawyer, Exec. Officer

Real Estate Commission

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Property Referral Sales Program

Whether or not the property referral program offered by J. M. Huber Corp. constitutes unlawful activity within the proscriptive language of 32 M.R.S.A. § 4003 represents a close question of law dependent upon one's construction of the statutory language defining real estate brokers and real estate salesmen. It is the opinion of this Office that the decision of the Real Estate Commission under date of January 23, 1975, is not erroneous, and does in fact, represent a reasonable interpretation of our licensing law.

Title 32, section 4003 of the Revised Statutes prohibits a licensee from giving "directly or indirectly" any part of his commission or compensation to any person who is not a licensee, or to one who is not exempt from licensure requirements.

As noted in our opinion of this Office dated July 23, 1974, the statutory prohibition against sharing commissions or compensation with unlicensed persons, as set forth in section 4003, is to insure that "license privileges are only performed by licensed individuals and that such privileges are not delegated or contracted out to unlicensed persons." It should again be emphasized that the term "services" as used in 32 M.R.S.A. § 4003, refers only to those services which require licensure as a real estate broker or salesman.

The definition of real estate broker and real estate salesman is set forth in 32 M.R.S.A. § 4001, sub-§§ (2) and (3) and reads as follows:

"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 real estate or the improvements thereon for others, as a whole or partial vocation."

"A 'real estate salesman' shall mean and include any person employed or engaged by or on behalf of a licensed real estate broker to do or deal in any activity as included in subsection 2 for compensation or other valuable consideration."


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Our statutory law relating to real estate brokers and salesmen constitutes remedial legislation intended solely for the protection of the public, and must, therefore, be liberally construed. Liberality of construction must not be extended to the point where an unambiguous statute is, in effect, amended through the process of speculation as to the meaning of words, however!

The Court of Appeals of Maryland has recently emphasized the need for liberality of construction of real estate brokerage statutes, but even more important, that any conduct which constitutes aid or assistance in the sale of realty must be clearly spelled out, if licensure is to be required. (see Real Estate Commission v. Phares (Homefinders), 268 Md. 344, 302 A.2d 1 (1973)). As a result of the decision in Phares, the Maryland Legislature amended its license law to include in the definition of a real estate broker "any person who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining for purchase or lease any residential real estate."

An argument can be advanced that one who procures prospective purchasers of realty for an owner, and upon consummation of any given sale, receives valuable consideration therefor, "negotiates the purchase or sale or exchange of real estate" within the meaning of our statute defining real estate broker. Such an argument is not persuasive, however, and it would seem more logical to conclude that the word "negotiation" connotes something more than simply aid or assistance in obtaining prospective purchasers.

In the absence of a clear legislative declaration to the contrary, we agree with the Commission's decision as noted above, that said sales program is not violative of our existing licensing statutes.


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