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1. REAL ESTATE BROKERS AND SALESMEN—QUESTION OF FACT WHETHER OR NOT ORGANIZATION IS ENGAGING IN SUCH ACTS AS WOULD REQUIRE BROKER'S LICENSE.
2. NOTHING IN REAL ESTATE ACT TO PROHIBIT ORGANIZATIONS FROM MAKING "EXCLUSIVE" LISTINGS OR CONTRACTS OF SALE IN NAME OF ORGANIZATION—MEMBERS TAKE LISTINGS.

SYLLABUS:

1. It is a question of fact whether or not an organization which is composed of real estate brokers and salesmen is engaging in such acts as would require a real estate broker's license.

2. There is nothing in the Real Estate Act which would prohibit organizations from making "exclusive" listings or contracts of sale in the name of the organization and have all of its members take the listings.

Columbus, Ohio, January 17, 1950

Mr. L. F. Waldbauer, Secretary, State Board of Real Estate Examiners
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Within the last few months we have been faced with a problem on which we would like your opinion.

"There are various associations or organizations made up of licensed real estate brokers and salesmen. For instance, the X Real Estate Board. These organizations have had printed 'Exclusive Contracts of Sale' forms in the names of the organizations and all members then are given the properties so listed for sale. A certain percentage of the commission is paid to the broker listing the property, a certain percentage is paid to the broker selling the property, and a certain percentage is paid to the organization.

"In the first place, these organizations are not licensed by this Department under the names in which the listings are taken.

"In the second place, an 'Exclusive' listing or contract of sale is defined as 'the appointment of *one* real estate broker as *sole* agent for the sale of a property for a designated period of time.'

"Our questions are these:

1. Is it necessary for such an organization to be licensed in the name of the organization?
2. Has such an organization the right to use an 'Exclusive' listing or contract of sale in the name of the organization and then have all members take the listings?

"An early reply will be appreciated."

Section 6373-25, General Code, states in part as follows:

"The term 'real estate broker' shall include any person, partnership, association, or corporation, foreign or domestic, who for another and for a fee, commission, or other valuable consideration, or who with the intention or in the expectation or upon the promise of receiving or collecting a fee, commission or other valuable consideration, sells, exchanges, purchases, rents or leases, or negotiates the sale, exchange, purchase, rental or leasing of, or offers, or attempts, or agrees to negotiate the sale,

exchange, purchase, rental, or leasing of, or lists or offers or attempts or agrees to list, or auctions, or offers or attempts or agrees to auction, any real estate, or the improvements thereon; * * * or who advertises or holds himself, itself or themselves out as engaged in the business of selling, exchanging, purchasing, renting, or leasing real estate, or assists or directs in the procuring of prospects or the negotiation or closing of any transaction, other than mortgage financing, which does or is calculated to result in the sale, exchange, leasing or renting of any real estate. * * *

Section 6373-26, General Code, states as follows:

“No person, partnership, association, or corporation shall act as a real estate broker or as a real estate salesman, or advertise or assume to act as such, without first being licensed so to do as provided in this act.”

In 3 O. Jur., Section 1 at page 751, it states in part as follows:

“The word ‘association’ is one of vague meaning used to indicate a collection of persons who have joined together for the accomplishment of a certain object. * * * The term is frequently applied to large partnerships or unincorporated companies, and sometimes to corporations formed not for profit, but for the advancement of some object in which the members are interested.

“* * * In Ohio, ‘association’ is defined as signifying a body of persons united without a charter, but under the methods and forms used by incorporated bodies, for the prosecution of some enterprise. * * *”

In Section 2 at page 752 of same volume, it states in part as follows:

“* * * They constitute merely groups of individuals, called by a common name, usually bound together by a contractual relationship. * * *”

See 4 Am. Jur., Section 2 at page 456. From the above it can be seen that the term “association” has a very broad definition and I will assume that the X Real Estate Board is such an association.

It is not clear from your request whether or not the X Real Estate Board engages in such acts as would constitute doing business as a broker. If the Board made contracts in its own name, held itself out as a broker, or attempted as an entity to do the identical things an individual would, as a broker, it should be licensed. In other words, if the X Real Estate Board as such engages in the acts enumerated in Section 6373-25,

General Code, it should be required to have a license. On the other hand, I do not believe it necessary to acquire a license if the X Real Estate Board is merely acting as a medium through which individual brokers exchange prospects and listings. There is no question but that the individuals who are members of the Board are licensed to sell real estate. There would be no prohibition in the Real Estate Act of Ohio which would prevent them from organizing a group for their mutual benefit. Thus, it would be a question of fact whether or not the X Real Estate Board is acting in such a manner as would require a real estate broker's license.

I have studied the Real Estate Act of Ohio carefully. I can find nothing in the Act which would prohibit an organization from using "exclusive" listings or contracts of sale in the name of the organization and then have all members take the listing.

Therefore, it is my opinion that it is a question of fact whether or not an organization which is composed of real estate brokers and salesmen is engaging in such acts as would require a real estate broker's license. I further believe that there is nothing in the Real Estate Act which would prohibit organizations from making "exclusive" listings or contracts of sale in the name of the organization and have all members take the listings.

Respectfully,

HERBERT S. DUFFY,

Attorney General.