

Real Estate Broker — Licenses — Brokers — Loan Companies.

A loan company selling its own real estate or real estate standing in the name of other parties but in which the company has an interest, without receiving any commission on the sale of the land, is not a real estate broker as defined by section 4058 R. C. M. 1921.

A. D. Thomas, Esq.,
Deputy Real Estate Commissioner,
Helena, Montana.

August 23, 1927.

My dear Mr. Thomas:

You have requested my opinion whether the Vermont Loan and Trust Company is a real estate broker as defined by section 4058 R. C. M. 1921.

From the information submitted, it appears that the Vermont Loan and Trust Company sells real estate for itself which it has taken over under foreclosure action. It also at times handles and sells real estate belonging to eastern investors, which may have been foreclosed in the name of the eastern investor, but in which it is an interested party because of the fact that it holds second mortgages, or has some of its own funds invested in the real estate, and it handles or sells the real estate for the eastern investor for the sole purpose of protecting its interest and without charging any commission or making any commission whatsoever from anyone in connection with the sale of the land.

Section 4058, supra, provides in part:

“A real estate broker, within the meaning of this Act, is a person who for a compensation, or promise thereof, sells or offers for sale, buys, or offers to buy, negotiates, or offers to negotiate, either directly or indirectly, whether as the employee of another or otherwise, the purchase, sale, exchange, of real estate, or any interest therein, for others as a whole or partial vocation. * * * The provisions of this Act shall not apply to any person who purchases property for his own use or account, nor to any person who, being the owner of property, sells, exchanges, or otherwise disposes of the same for his own account, nor to any person who, not representing himself to be, and not following the vocation of real estate broker, as a whole or in part, acts in that capacity for another in connection with a single transaction, nor to any person holding a duly executed power of attorney written in a separate instrument, designated as such, from the owner granting power to consummate the sale, exchange, or leasing of real estate, * * *”

From the foregoing, it would appear that the handling of real estate for a commission or compensation is what constitutes a real estate broker, and inasmuch as the Vermont Loan and Trust Company is not selling real estate for others on this basis, but is simply selling its own lands or lands in which it has an interest, it is my opinion that it is not a real estate broker as defined by the terms of the act in question, but comes within the exception provided therein.

Very truly yours,

L. A. FOOT,
Attorney General.