

Licenses—Real Estate Brokers—Real Estate.

When compensation is expected either directly or indirectly in connection with the sale of real estate the person acting as the representative of a non-resident company is a real estate broker, as defined by section 4058 R. C. M. 1921, and required to secure a license.

A. H. Bowman, Esq.,
Commissioner of Agriculture,
Helena, Montana.

October 6, 1927.

My dear Mr. Bowman:

You have requested my opinion on the following question: Where a party posing as a representative of a non-resident company, known as the Colonial Brokerage Company, lists real estate for sale under a contract, whereby the company requires a cash deposit, and agrees to return the same in case the real estate is not sold, and where no commission is charged for the sale of the real estate but the personal property is listed at the same time and a commission is charged on the

sale of the personal property, is such a person acting as a real estate broker and required to secure a license under the laws of this state?

Section 4058, R. C. M. 1921 provides as follows:

“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 word “person” as used in this act, shall be construed to mean and include a corporation. The provisions of this act shall not apply 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, nor to the services rendered by an attorney at law for or on behalf of his client, nor to any receiver, trustee in bankruptcy, guardian, administrator, or executor, nor to any person acting under the order of the court, nor to any person selling under a deed of trust.”

From the facts submitted by you it is apparent that the party in question is representing himself a real estate broker and the question then is as to whether or not he is acting as such for a compensation or promise thereof, and while there is evidently an attempt being made by this party to make it appear that he is receiving no compensation for the sale of the real estate, yet it is evident that a compensation is expected, whether directly or indirectly, for whatever service is performed in connection with the sale of the same. This compensation may be the use of the money which is collected as a deposit for a short time, or may be the consideration of having the right to sell the personal property belonging to the owner of the real estate sold.

It is therefore my opinion that this party is acting as a real estate broker for compensation or a promise thereof and should be required to secure a real estate broker's license, and that if this party is operating in the state of Montana without having secured a license he is subject to the penalty imposed by section 4074 R. C. M. 1921.

Very truly yours,

L. A. FOOT,
Attorney General.