

MEMO TO BOARD

RE: Licensure of Employees of Real Estate Owner

From: M. Gene Allison, Board Counsel

Date: June 30, 2008

QUESTION PRESENTED: Must Employees of the Owner of Real Estate Have a License From the Board in Order to Advertise or Show Property Belonging to the Owner?

SHORT ANSWER: Employees of the owner of real estate must have a license from the Board in order to advertise or show property belonging to the owner.

The question has arisen in the context of “building companies”. A building company builds and then sells buildings/real estate. Typically, a building company is some form of artificial person under the law such as a corporation etc.. Employees of corporations advertise the properties for the corporation and engage in the actual negotiations of the sale. Likewise, it is conceivable that a sole owner of a building company would employ someone to advertise and sell the property.

Under Montana law, it is unlawful for a person to engage in, conduct, advertise or represent to the public as engaging in or conducting the business or acting in the capacity of a real estate broker or a real estate salesperson within this state without a broker or salesperson license and otherwise complying with this chapter. MCA 37-51-301. The Board does not license corporations, partnerships, or associations. Such artificial entities may act as a licensee if every corporate officer and every partner performing the functions of a licensee is licensed. *Id.*

MCA 37-51-103 exempts (from licensing requirements) any person who, as owner or lessor, performs any brokering/salesperson acts with reference to property owned or leased by that person. However, MCA 37-51-102(4) in part defines a broker as an individual who:

- (a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate . . . ;
- (b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

Clearly the law indicates that a person only acts as a broker when he is doing it for another. Corporations, partnerships, associations and other artificial persons necessarily must act through natural persons. Technically, the individual persons who engage in the negotiations for these real estate deals are acting as brokers for the building company - not themselves. In other words, building company employees who handle the real estate exchanges are performing these functions for another. That means they are acting as brokers for the building company. Persons who act as brokers need to be licensed. MCA 37-51-301. Thus, if any unlicensed employees of a building company are engaged in brokering activities as defined in the statute, they will be in violation of the law.

If a building company is composed of and operated entirely by a natural person, that person may personally advertise and show his or her own properties. However, it would be unlawful for an employee of the sole owner to act as a broker without a license from the Board..

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Board of Realty Regulation
State of Montana, Department of Labor and Industry