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ATTORNEY GENERAL OPINION NO. 81-207

Kansas Real Estate Commission  
Room 1212  
535 Kansas Avenue  
Topeka, Kansas 66603

Re: Personal and Real Property -- Real Estate Brokers and  
Salesmen -- Permissible Activities of Unlicensed "Tour Guides"

Synopsis: An individual who is employed to act solely as "tour guide" for a developer, and whose functions and duties do not involve assisting or directing in the procuring of prospective buyers or customers or otherwise contravene the provisions of K.S.A. 1980 Supp. 58-3035(c) (8), is not required to be licensed as a real estate broker or salesperson. Cited herein: K.S.A. 1980 Supp. 58-3035, 58-3036.

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Dear Commissioners:

You inquire whether an individual who is employed to act solely as a "tour guide" for a developer violates the proscription provided at K.S.A. 1980 Supp. 58-3036 as that provision is further defined at K.S.A. 1980 Supp. 58-3035(c) (8).

K.S.A. 1980 Supp. 58-3036 states in part:

"No person shall . . . (c) perform or offer, attempt or agree to perform any act described in subsection (c) of K.S.A. 1980 Supp. 58-3035, whether as a part of a transaction or as an entire transaction, unless such person is licensed pursuant to this act."

K.S.A. 1980 Supp. 58-3035(c) (8) states:

"(c) 'Broker' means an individual, other than a salesperson, who, for compensation, engages in any of the following activities as an employee of, or on behalf of, the owners of real estate:

. . . .

"(8) Assists or directs in the procuring of prospects calculated to result in the sale, exchange or lease of real estate."

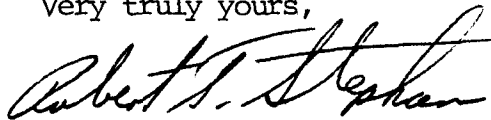
It is our understanding that, in the situation at hand, the "tour guide" will assist the developer, or the licensed real estate broker retained by the developer, by escorting a prospect who arrives at the property and expresses an interest in viewing lots and amenities being offered. The tour guide will not be authorized to make statements concerning the terms or conditions of sale or any other factual representations concerning the project. The tour guide will, however, be permitted to show where such information may be found in the Kansas Public Offering Statement or the HUD Property Report. If a question should arise that cannot be answered by either of those documents, then the tour guide will be required to inform the prospect that only a licensed real estate salesman or broker may answer such questions. Once a prospect has toured the property, he or she will be brought back to the sales office to be interviewed by licensed personnel.

In the context of your inquiry, the crucial question to be resolved is whether the tour guide's stated activities can be construed as assisting or directing in the "procuring of prospects calculated to result in the sale, exchange or lease of real estate." K.S.A. 1980 Supp. 58-3035(c) (8), supra.

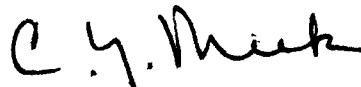
In determining whether 58-3035(c)(8) applies to the tour guide's stated activities, we must ascertain and give effect to the intent of the legislature, as expressed by the language of the statute. Randall v. Seemann, 228 Kan. 395, 397 (1981), and cases cited therein. The terms "procuring" and "prospects" are not defined by the act and, accordingly, must be accorded their ordinary meanings. K.S.A. 77-201, Second; see, also, Personal Thrift Plan of Wichita, Inc. v. State, Kansas Supreme Court, No. 52,592, filed June 10, 1981. In Webster's Third New International Dictionary (1968), "procure" is defined as "to get possession of: obtain, acquire" (at pg. 1809); "prospect" is defined as a "potential buyer or customer" (at pg. 1821).

Given the plain and ordinary meanings of these terms, it is apparent that the legislature intended to preclude persons who are not licensed as real estate brokers or salesmen from assisting in the obtaining or acquiring of potential buyers or customers. Accordingly, it is our opinion that the duties of the tour guide, as previously set forth herein, do not involve assisting in the "procuring of prospects." Rather, once the individual arrives at the developer's property for a tour and expresses interest in seeing the property, the individual has already become a "prospect," i.e., a potential buyer or customer. It follows, then, that the activity undertaken by the tour guide subsequent to this point in time and prior to any sale, cannot be considered as assisting in procuring, since the act of procuring the prospect has been completed at the time of the prospect's arrival. Under these circumstances, therefore, it is unnecessary for the tour guide to be licensed as a real estate broker or salesperson. However, we must caution that this opinion is based solely on the specific facts provided by you, and any deviation therefrom may result in a different conclusion.

Very truly yours,



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