



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

July 16, 1981

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 81-161

Mr. J. Paul Flower, Director  
Kansas Real Estate Commission  
Room 1212, 535 Kansas  
Topeka, Kansas 66603

Re: Personal and Real Property--Real Estate Brokers  
and Salesmen--Exemptions From Licensure Requirement

Synopsis: Pursuant to the provisions of the Real Estate Brokers' and Salespersons' License Act, K.S.A. 1980 Supp. 58-3034 et seq., any person, in the absence of an applicable exemption, must be licensed as a real estate broker, associate broker, or salesperson in order to auction real estate as an employee of or on behalf of the owner of real estate. Although subsection (d) of K.S.A. 1980 Supp. 58-3037 exempts the executor of an estate from the licensure requirement, said exemption statute does not exempt unlicensed auctioneers employed by the executor, and such non-exempt, unlicensed auctioneers may not auction real estate. Cited herein: K.S.A. 1980 Supp. 58-3035, 58-3036, 58-3037.

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Dear Mr. Flower:

You request our interpretation of K.S.A. 1980 Supp. 58-3037(d). Specifically, you inquire as to whether the executor of an estate may engage a person not licensed under the provisions of the Real Estate Brokers' and Salespersons' License Act, K.S.A. 1980 Supp. 58-3034 et seq., to auction real estate.

Mr. J. Paul Flower  
Page Two  
July 16, 1981

Subsection (c) of K.S.A. 1980 Supp. 58-3036 provides that, in the absence of an exemption, no person shall:

"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." (Emphasis added.)

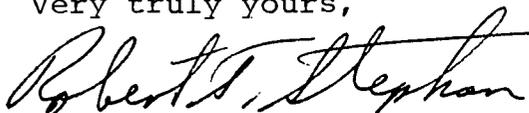
One of the acts enumerated in subsection (c) of K.S.A. 1980 Supp. 58-3035, for which a license is required (in the absence of an exemption), is the auctioning of real estate. See K.S.A. 1980 Supp. 58-3035(c)(5). Therefore, unless one of the exemptions set forth in K.S.A. 1980 Supp. 58-3037 is applicable, one must be licensed as a real estate broker, associate broker, or salesperson in order to auction real estate.

Subsection (d) of K.S.A. 1980 Supp. 58-3037 exempts the following individuals from the licensure requirement imposed by the Real Estate Brokers' and Salespersons' License Act:

"Any person acting as receiver, trustee in bankruptcy, administrator, executor or guardian, or while acting under a court order or under the authority of a will or a trust instrument or as a witness in any judicial proceeding or other proceeding conducted by the state or any governmental subdivision or agency." (Emphasis added.)

This exemption is clear and unambiguous. It exempts any person acting as an executor from the provisions of the licensure act. Likewise, it exempts any person acting under a court order or under authority of a will or a trust instrument. If a person falls into one of these classes, he or she may auction real estate without being licensed as a real estate broker, associate broker, or salesperson. However, the exemption statute does not provide that persons within the exempt classes may "engage" unlicensed auctioneers to auction real estate, and it is our opinion that an executor may not engage a non-exempt, unlicensed auctioneer to auction real estate.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General