

Paper may need broker's license



Stand-alone real estate publications in question

By JEAN MANEKE
MPA Legal Consultant



(Jean Maneke, MPA's Legal Hotline attorney, can be reached at (816) 753-9000; jmaneke@manekelaw.com.)

A number of the newspapers that are members of Missouri Press Association are involved in publishing advertisements for real estate. Many publish real estate ads in their newspapers either in the classified advertising section or in stand-alone sections featuring real estate features and advertising. Others may publish special publications relating to real estate. It is to those publications that I address these comments.

Occasionally in the course of handling hotline calls, I have received information regarding complaints made by the Missouri Real Estate Commission in connection with such publications, claiming that they violate state law in as much as the publishers of such special publications are required to have a Missouri real estate broker's license to publish such a publication.

The provisions of Section 339.010 contain the definition of the term "real estate broker" for Missouri law purposes. A broker is one who, among other things, "engaged in the business of charging to an unlicensed person (ie: a consumer) an advance fee (ie: an advertising fee) in connection with any contract (ie: agreement) whereby the real estate broker undertakes to promote the sale of that person's real estate through its listing in a publication issued for such purpose intended to be circulated to the general public."

Does your newspaper publish a separate listing of real estate for sale and distribute this publication to the public? If so, you are probably a real estate broker and subject to the provisions of the brokers' law in Missouri unless you fall within an exception contained in that law. That exception excludes from the requirements of brokerage licensing any "newspaper or magazine or periodical of general circulation whereby the advertising of real estate is incidental to the operation of that publication ..."

So, if you are a metropolitan or community newspaper running real estate ads in the paper (either classified or display), you are excluded from the law so long as you are publishing other materials (such as news) in your newspaper. However, if your publication is comprised solely of real estate listings, you are probably subject to the statute cited above and are required to hold a real estate broker's license in the state.

There is no case law in the state interpreting this law. I discussed this situation with Janet Carter, executive director of the Missouri Real Estate Commission. She said that if a publication is clearly a "homes" magazine, "it's expected to have a license." When they encounter such a publication, "We send them a letter and ask them to tell us who is their broker."

If they don't have a broker, the publication is expected to cease publication. If they don't, the next step is a "cease and desist" action, Ms. Carter said. And you cannot just borrow your friendly neighborhood broker's license, she said. The broker is then responsible for errors in your publication and may incur legal liability from this action, which could cost them their license. A publisher certainly can take the steps (including studying for and taking the sales exam and the broker exam) to acquire this license on their own.

Or, it would seem, I noted, that the content might be shifted somewhat to increase the emphasis on news so that the publication falls within the exemption. She said that she could not comment on to what extent the news content had to take precedence over the advertising content, and with no case law in this area, it would seem that this is an unsettled question of law in Missouri.

