

The State of South Carolina



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The Honorable Joyce C. Hearn  
Member, House of Representatives  
1300 Berkeley Road  
Columbia, South Carolina 29205

Dear Representative Hearn:

Your letter of January 29, 1988 to Attorney General Medlock has been referred to me for response. In that letter, you appear to have asked the following questions:

(1) Whether the description of a "property manager", as set forth in 1976 S. C. Code Section 40-57-10(4), excludes a person who only (a) exhibits the property; (b) gives the real costs or any other charges of the contract; (c) advertises the property; or (d) supplies applications or gives any other information pertaining to the unit to be rented.

(2) Whether the description of a "property manager" excludes a person who only shows rental property but does not sign the contract or lease establishing the leasehold arrangement.

As a point of reference, I have attached a copy of Section 40-57-10. By its plain and unambiguous language, the statute excludes from its coverage a person who only exhibits property, accepts applications for leases, or furnishes prospective tenants with information relative to the rental of such units. It would seem beyond argument that the exemption which allows a person to accept applications would also allow the person to supply applications. To read the statute otherwise would produce

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the absurd result of the person being permitted to accept applications but not to furnish them in the first instance. Such a literal application of a statute has been consistently rejected by South Carolina Courts. See, for example, Southeastern Kusan, Inc. v. S. C. Tax Commission, 276 S.C. 487, 280 S.E.2d 57 (1981).

It also seems beyond doubt that the statutory exemption which allows a person to furnish prospective tenants with information relative to the rental of units would include the furnishing of the real costs or any other charges of the contract. Certainly, the charges and costs connected with the rental unit is information that is relative to the rental of the unit.

With respect to the advertising of a rental unit, the statute appears to be silent on this specific issue. However, reading the statute as a whole in light of the manifest legislative intent, it is strongly inferable that merely advertising property would not bring a person within the description of a "property manager". This view is reinforced by the fact that the statute expressly permits a person to "exhibit rental property" and to "furnish prospective tenants with information". It seems clear that the purposes accomplished by advertising property would be no more than those accomplished by exhibiting the property and furnishing information relative to it.

It should be noted here that the statute does not permit a person to "hold himself out as a property manager". Therefore, a person advertising property would have to refrain from stating or implying that he is able to engage in the activities of a property manager described in the statute.

Your second inquiry concerns a person who exhibits rental property but does not actually sign the contract or lease. Clearly, by virtue of 40-57-10(4)(2)(a), the person may not sign the contract or lease. Pursuant to 40-57-10(4)(2), it is just as clear that the person may exhibit the property. Thus, your question appears to pertain to certain activity which might occur, one might say, between the "showing and the signing".

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As has been previously stated, the statute permits a person to exhibit the property, supply applications, accept applications and furnish information relative to the rental of the property. However, the statute expressly prohibits a person from negotiating a contract with a tenant. Black's Law Dictionary, 5th Edition, 1979, defines negotiation as "the process of submission and consideration of offers until an acceptable offer is made and accepted" and "the act of settling or arranging the terms and conditions of a bargain, sale, or other business transaction".

Thus, while the line drawn by the Legislature between permissible and impermissible activity may, arguably, be fine, it has nonetheless been drawn. A person may exhibit property and furnish information relative to the rental of such property; i.e. cost, size, etc. However, a person may not submit or accept offers respecting the rental of a unit or settle or arrange the terms and conditions of the rental of a unit. One who does so becomes a "property manager".

In light of the present statute, the determination of whether a person's activities are such as to require that the person be deemed a "property manager" must be made on a case-by-case basis by the agency given the responsibility to do so. In this instance, that is the South Carolina Real Estate Commission. There is ample precedent to the effect that the construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons. Faile v. S. C. Employment Security Commission, 267 S.C. 536, 230 S.E.2d 219, (1976). Therefore, while subject to judicial review, interpretations of the statute by the Real Estate Commission should be accorded an appropriate measure of respect.

Finally, during a telephone conversation regarding this matter, you asked for recommendations as to how the statute could be redrawn to eliminate any ambiguity or to make the "fine line" somewhat more bold. We can only suggest that if it is the intent of the Legislature to prohibit the person from "negotiating" the contract or lease, then the term "negotiate" might be more clearly defined so as to prohibit the person, when supplying relevant information, from varying or deviating from the costs and/or other terms and

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conditions previously established by the owner of the property. In other words, the person must be required to present such information to prospective tenants on a "take it or leave it" basis. A person who attempts to offer or accept terms other than those established by the owner of the property would be engaging in the activities of a property manager.

CONCLUSION

It is the opinion of this Office that the description of a property manager, as set forth in 40-5-10(4), does not include a person who only (a) exhibits the property; (b) gives the real costs or any other charges of the contract; (c) advertises the property; or (d) supplies applications or gives any other information pertaining to the unit to be rented. Also, a person who is not a property manager may exhibit the property but is prohibited from negotiating the terms of the contract and/or signing the contract.

I trust that you will find this response to be of some assistance to you. Please contact me if you have further questions or comments.

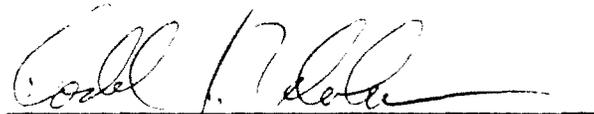
Very truly yours,



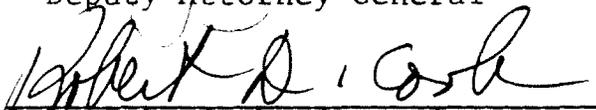
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