

1972 S.C. Op. Atty. Gen. 123 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3306, 1972 WL 20446

Office of the Attorney General

State of South Carolina

Opinion No. 3306

May 2, 1972

***1 Re: Use of Unlicensed Real Estate Auctioneer To Conduct Judicial Sales in Newberry County**

Mr. T. W. Hunter
Newberry County Attorney
Newberry, South Carolina

Dear Mr. Hunter:

You have requested this office's opinion as to the propriety of the Probate Judge of Newberry County, who also acts as Master in Equity (Section 15–501, Code of Laws of South Carolina, 1962), using an unlicensed real estate auctioneer to conduct judicial sales in the County. In other words, the auctioneer has not been issued a broker's license under the Real Estate Licensing Law set forth in Chapter 28 of Title 56, South Carolina Code.

You point out that no one has ever questioned the authority of the Judge to employ an auctioneer to conduct judicial sales. I point out that, apparently, at least two counties have questioned such practice. See Section 10–1757 (Abbeville County) and Act 992 of 1966 (Lexington County).

Assuming the authority of the Probate Judge to employ an auctioneer, we turn to your specific inquiry.

The Real Estate Licensing Law was amended in 1967 (Act 455, 55 Stats., p. 652) to expressly bring real estate auctioneers within its purview. In other words, Section 56 1545 was amended by adding the words ‘of real estate auctioneers,’ so that it is now unlawful for an individual to act as a real estate auctioneer without a license issued by the Real Estate Commissioner. The Commissioner issues only two types of individual licenses, a broker's and a salesman's license, Section 56–1545.11; and Section 56–1545.1:1 was created by Act 455 to define the term ‘broker’:

‘The term ‘broker’ shall mean any person who for a fee, commission or other valuable consideration, or with the intent or expectation of receiving a fee, commission or consideration, negotiates or attempts to negotiate the listing, sale, auction, purchase, exchange or lease of any real estate or of the improvements thereon, or collects rents or attempts to collect rents, or who advertises or holds himself out as engaged in any of the foregoing activities. The term also includes any person employed by or on behalf of the ‘owner’ of real estate to conduct the sale, auction, leasing, or other disposition thereof at salary or for a fee, commission or any other consideration . . .’ Section 56–1545.1:1.

It would appear that one retained by a judicial officer to conduct a judicial sale of real estate as an auctioneer would come within the purview of the licensing provisions of the Real Estate Licensing Law, and that neither the sale nor the auctioneer would be exempt from its provisions. See Sections 56–1545.2 and 56–1545.3. Thus, the auctioneer would, as an individual, be running the risk of criminal prosecution.

Under these circumstances, we advise that, in our opinion, an unlicensed person should not be retained as an auctioneer to conduct judicial sales. We do not mean to infer that past sales conducted by unlicensed individuals are not valid and are unenforceable or that like future sales would not be valid and enforceable. We are merely saying that South Carolina does have a Real Estate Licensing Law, and that only persons properly licensed should be employed to perform tasks coming within the scope of that law.

Very truly yours,

*2 Robert W. Brown
Assistant Attorney General

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