

1975 WL 29687 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 10, 1975

\*1 Mr. R. H. Baer, Jr.  
Commissioner  
S. C. Real Estate Commission  
900 Elmwood Avenue  
Columbia, South Carolina 29201

Dear Mr. Baer:

Your letter concerning the Real Estate Commission's policy with respect to the licensing or exemption of apartment or resident managers has been referred to me for reply.

The regulation proposed involves an interpretation of Section 56-1545 of the 1962 Code of Laws of South Carolina, as amended, which reads:

'It shall be unlawful for any person to act as a real estate broker, counsellor, real estate salesman, appraiser, property manager, or real estate auctioneer, or to advertise or assume to act as such without first having obtained a license issued by the Real Estate Commissioner.'

and Section 56-1545.1:1 which defines 'broker' as:

'[A]ny 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 a salary or for a fee, commission or any other consideration. It also includes any person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby he undertakes primarily to promote the sale of real estate through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both.'

In light of the opinion issued to you by Mr. Quinn on June 21, 1974, it appears that if a resident or apartment manager did not 'conduct leasing . . . negotiate or attempt to negotiate leasing . . . collect or attempt to collect rents . . . advertise or hold himself out as engaged in any of these activities for a salary, fee, or commission' then they would not come within the confines of the above mentioned statutes requiring licensing. Therefore it appears that the policy set forth in your correspondence would not be violative of the rule and regulation making powers of the Commission and does not alter the scope of the previously established statutory guides. See Opinion of Mr. Quinn to Mr. Baer dated February 1, 1974.

In addition, I can see no prohibition of the requiring security deposits to be retained in a South Carolina bank in the city and county of the situs of the real property.

In conclusion, it does not appear that the policy espoused by the Real Estate Commission is in contravention of the legislative policy intended by the statutes. However, since the area of resident and apartment managers is not expressly

covered by the statute and is an area of concern, it should be noted that a legislative clarification in this area should be urged.

\*2 If this Office can be of any further assistance, please do not hesitate to contact us.

Sincerely yours,

H. Michael Bowers

Law Clerk

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