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ISBA Unauthorized Practice of Law Committee
Formal Opinion No. 1 of 2007



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Beware REALTORS®! The Indiana State Bar Association (ISBA) Unauthorized Practice of Law Committee has weighed in on what REALTORS® can and cannot do -- in their opinion. This is not binding precedent since it is not case law, but simply the opinion of this ISBA Committee. However courts may very well interpret these issues following these formal guidelines. Questions are discussed below:

QUESTION 1

Does a real estate agent or broker engage in the unauthorized practice of law when he assists a buyer or seller of real estate in completing standard real estate sales forms and providing advice regarding all elements of the sale through closing for a fixed fee, and when he/she is not the selling agent or listing agent or broker?

Yes. A real estate broker may not make a separate charge for completing any standardized forms, and he/she may not prepare such forms for persons in transactions, which he is not acting as a broker, unless he/she is one of the parties to the contract or instrument.

required. The broker engages in the practice of law by stepping into the advisory role.

Even in transactions in which a real estate agent or broker is the selling or listing agent/broker, the REALTOR® cannot give advice or opinions as the legal rights of the parties, as to the legal effect of instruments to accomplish specific purposes or as to the validity of title to real estate; and he/she may not prepare reservations or provisions to create estates for life or in remainder or any limited or conditional estates or any other form of conveyance than a direct present conveyance between the parties, as provided for in standardized, approved forms, to be effective upon delivery.

We would suggest that brokers/agents not be involved in transactions unless there is an agency relationship with either the buyer or seller to lower the legal risk.

Generally, filing in standard forms is not considered the practice of law because only a common knowledge of the information necessary for the form and a general knowledge of the legal consequences are

QUESTION 2

Does a real estate agent or broker engage in the unauthorized practice of law when he/she provides and completes standard real estate sale forms to document a sale of business transaction that does not involve the sale of real estate?

Yes. The Court in Indiana Real Estate Assoc., 191 N.E.2d 711 (Ind.1963), allows for the “filling in of blanks in...forms [prepared by attorneys] by licensed real estate brokers and agents in transactions in which they are authorized by statute to perform.”

With certain exceptions, brokers are allowed, for consideration, to sell, buy, trade, exchange, option, lease, rent, manage, list or appraise real estate or negotiate or offer to perform any of these acts in Indiana or with respect to real estate situated in Indiana, with a license.

By statute, brokers are allowed to perform acts only related to real estate. It is clear that filling in forms whose legal effects are outside the scope of a broker’s statutory authority, even if those forms are prepared by an attorney, is not authorized by the Court’s opinion in *Indiana Real Estate Assoc.*

Regardless of the complexity and likelihood of error in documenting a business sale transaction, the sale of a business is outside the scope of a broker’s statutory authority. This, in combination with the fact that the forms which brokers are authorized to use generally do not apply to business sales where the business does not involve real estate, makes documenting the sale of a business by agent/broker the unauthorized practice of law even if this documentation involves standard real estate forms. There are also tax consequences and security issues that are part and parcel of business sale transaction. We would suggest legal advice be obtained in addition to accounting and securities experts if a broker/agent is involved in business sales transactions to avoid the unauthorized practice of law. □