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PREPARATION OF LEGAL DOCUMENTS IN REAL PROPERTY SALE

Adopted January 20, 1961.

Addendum issued 1995.

Syllabus

It is improper for a lawyer to prepare legal documents in connection with the sale of real property at the request of a firm, which specializes in assisting persons in the sale of their own property, and which does not act as a true broker in the transaction.

Facts

A firm offers services in connection with the sale of real property. The services comprise, among other things, the maintaining of files and other information on available property in the area; a file of prospective buyers and sellers of property; and the closing of real estate transactions including the preparation of deeds, notes, deeds of trust, and allied documents. A seller wishing to avail himself of the services of the firm signs a contract under the terms of which he agrees that if he sells his property within the time prescribed (usually 90 days) he will pay the firm a flat fee of \$300. The firm then places a "For Sale" sign on the property, inserts advertisements in the newspapers, and in other respects aids the person in the sale of his property. The contract provides that the seller furnish a title insurance policy (no mention is made of an abstract of title). When the seller finds a buyer for the property, the firm or its attorney prepares the option contract and, at the appropriate time, closes the sale. No separate charge is made for the preparation of the legal documents, but the seller is informed that if he retains his own lawyer the \$300 fee will be reduced by \$25. Otherwise, an attorney employed or retained by the firm will prepare all the legal documents.

Opinion

The preparation of legal documents in connection with the sale of property constitutes the practice of law. This is true even though standard printed forms are used and the only service performed is filling in the blank spaces on the forms. But the Supreme Court of Colorado decided in the so-called "real estate cases" (135 Colorado 398) in 1957 that even though constituting the practice of law these documents could be prepared without charge by licensed real estate brokers with respect to transactions handled by them. The first question to be disposed of is whether the attorney in question is in violation of Canon 47 which provides that no lawyer shall permit his professional services to be used in the aid of the unauthorized practice of law.

We hold that the firm in question is not within the ambit of the real estate cases. We are convinced that the opinion of the court, as it relates to sales of real estate, is intended to apply only to the usual seller-broker or buyer-broker relationship. In such instances the broker can prepare the legal documents necessary to close the sale by completing standard and approved printed forms. The facts of the above case disclose an entirely different relationship. The firm is not acting as a broker, though it may be licensed as such, but rather is offering certain *services* for sale, including services which are the practice of law. We cannot believe that the protective umbrella of the court was intended to extend so far. Thus the activities of the firm, in our opinion, constitute the unauthorized practice of law.

It follows that the attorney in question, by aiding or making possible this unauthorized practice, is in violation of Canon 47. By his conduct the attorney also violates Canon 35, which states in part:

The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client.

Who is the client? Even though the attorney is employed or retained by the firm, the legal documents he prepares affect the rights and liabilities of the buyer and seller of the property, not the firm. Therefore, the intervention of the firm between the attorney and the parties to the sale is improper.

Furthermore, the attorney also violates Canon 6, since he is in effect representing both buyer and seller. This Canon provides that it is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts.

Lastly, Canon 27 prohibiting advertising is violated, since the described activity is a feeder supplying the lawyer with legal business from persons who would not otherwise seek him out.

1995 Addendum

This Opinion was based upon the Canons of Professional Ethics, the predecessor to the Code of Professional Responsibility. The Colorado Rules of Professional Conduct became effective on January 1, 1993, replacing the Code of Professional Responsibility. While the language of the Rules is somewhat different from the Code and the Canons, the Ethics Committee considers this Opinion to continue to provide guidance to attorneys in this area. Attorneys are cautioned to review The Colorado Code of Professional Responsibility (found in the *Colorado Ethics Handbook*), to update the research contained in this Opinion and to conduct any independent research necessary.

Relevant provisions of the Colorado Rules of Professional Conduct, which should be examined together with this Opinion, are Rule 5.4(b) (prohibiting lawyers from assisting in the unauthorized practice of law); Rule 5.4 and Rule 2.1 (regarding the duty to exercise independent professional judgment); Rule 5.4(a) (regarding division of fees with non-lawyers) and Rule 1.7 (regarding representing conflicting interests) and Rule 7.2(c) (regarding giving value for recommending a lawyer's services).