



**JIM HOOD  
ATTORNEY GENERAL**

**OPINIONS  
DIVISION**

November 27, 2018

Mr. Jack Armstrong, Vice-Chairman  
Mississippi Auctioneer Commission  
Post Office Box 50  
Morton, MS 39117

Re: Auctioneer Who Handles Real Estate Transactions

Dear Mr. Armstrong:

Attorney General Jim Hood received your letter of request and assigned it to me for research and response.

### **Background and Issue Presented**

Your letter states:

Section 73-4-3, (c) and (e), Miss. Code Ann. (1972) as amended provides the following:

(c) "Auctioneer" means an individual who is engaged in, or who by advertising or otherwise holds himself out as being available to engage in, the calling for, the recognition of, and the acceptance of, offers for the purchase of goods or real estate at an auction.

(e) "Goods" means any tangible personal property that can be lawfully offered for sale, real estate, property sold pursuant to any will or settlement of any estate, property sold pursuant to any legal foreclosure, automobiles or farm or other heavy equipment.

Is an auctioneer who handles any real estate transaction required to be licensed as a real estate broker? Would the auctioneer statute give auctioneers an exemption from holding a real estate broker's license?

### **Short Response**

The answer to your first question is yes. An auctioneer who handles real estate transactions would be required to be licensed as a real estate broker. The answer to your second question is no. The auctioneer's statute does not provide an exemption from the requirement of holding a real estate broker's license.

### Discussion and Analysis

Real estate licenses are governed by Section 73-35-1, *et seq.* Section 73-35-1 states, in pertinent part:

. . . **it shall be unlawful for any person**, partnership, association or corporation **to engage** in or carry on, directly or indirectly, or to advertise or to hold himself, itself or themselves out as engaging in or carrying on the business, **or act in the capacity of, a real estate broker**, or a real estate salesperson, within this state, **without first obtaining a license** as a real estate broker or real estate salesperson as provided for in this chapter.

(Emphasis added.)

Section 73-35-3(1) defines “real estate broker” to:

. . . **include all persons . . . who for a fee**, commission or other valuable consideration . . . list, sell, purchase, exchange, rent, lease, manage or **auction any real estate**.

(Emphasis added.)

Based on Section 73-35-3(1), it is clear that any person who is auctioning real estate would fall within the meaning of the words “real estate broker”. Furthermore, Section 73-35-3(8) provides exceptions for persons who are not required to be licensed as real estate brokers. The exceptions do not include an auctioneer. This subparagraph provides:

(8) The provisions of this chapter shall not apply to:

- (a) Attorneys at law in the performance of primary or incidental duties as such attorneys at law.
- (b) Any person holding in good faith a duly executed power of attorney from the owner, authorizing the final consummation and execution for the sale, purchase, leasing or exchange of real estate.
- (c) The acts of any person while acting as a receiver, trustee, administrator, executor, guardian or under court order, or while acting under authority of a deed of trust or will.
- (d) Public officers while performing their duties as such.
- (e) Anyone dealing exclusively in oil and gas leases and mineral rights.

Section 73-4-3 in the auctioneer statutes simply defines an auctioneer to include someone who auctions real estate. It does not provide an exception to the real estate

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broker licensing requirements.

This office previously opined that "real estate broker" is clearly defined for licensing purposes to include anyone who, for a fee, commission, or other valuable consideration, auctions any real estate. See MS AG Op., Gipson (October 27, 2017). We further opined that auctioneers were not included in the exemptions listed in Section 73-35-3(8). Accordingly, it remains our opinion that auctioneers who engage in the auction of "real estate" as defined by Section 73-35-3(2) must also obtain a real estate broker's license.

If we can be of further assistance, do not hesitate to call us.

Very truly yours,

JIM HOOD, ATTORNEY GENERAL

By:



Emiko Hemleben  
Special Assistant Attorney General

OFFICIAL OPINION