

GA
April 10, 1944

Mr. J. D. Kinnison
Deputy State Real Estate Commissioner
Capitol Annex
Phoenix, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Sir:

We have your letter of April 5, 1944, containing this query:

"Can an owner who is dealing in his own subdivision give employees power of attorney to act in his stead in handling the sale of these lots without being licensed by this department?"

Section 67-1704, Arizona Code 1939, as amended, Laws 1941, Chapter 100, Section 2, provides this exception:

"2. A person holding a valid power of attorney, which is being used for specific purposes."

In the case of Woods v. National Surety Co., 27 Ariz. 479, 233 Pac. 900, our Supreme Court held:

"A broker sells or buys, or negotiates loans, leases, or rents, and collects rents for others for compensation. If he does any of these acts concerning his own property, the statute expressly exempts him from the necessity of securing a license or giving a bond. When dealing with his own property he is not doing so for compensation, and is not a real estate broker, as the statute defines that term. A broker is an intermediary or middleman and, in effecting a sale or exchange of property, or doing any of the acts defined by the statute as brokerage acts, is, in a certain sense, the agent of both parties to the transaction."

Since, under Section 67-1704, supra, the Real Estate Act does not apply to a person dealing in his own property (not cemetery property) such owner of property is not required to procure a broker's or agent's license, and furnish bond. It is a fundamental principle of our law, that if a person, in the ordinary affairs of business and concerning property of his own can do something lawful, he has the right to delegate to another the power lawfully to do the same thing.

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We are, therefore, of the opinion that an owner who is dealing with his own subdivision has the right to give to his employees power of attorney to act in his stead in handling the sale of such subdivision lots without being licensed by the State Real Estate Department, if such power of attorney is lawfully executed, and is being used for the specific purposes, stated in such power of attorney. Such attorney-in-fact must not hold himself out, or act, as a real estate broker, or real estate agent, but in dealing with others must act solely upon the authority of, and within the powers of, such power of attorney.

Respectfully,

JOE CONWAY
Attorney General

THOMAS J. CROAFF
Assistant Attorney General

EARL ANDERSON
Chief Assistant
Attorney General

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