



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

Gerald C. Mann
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ATTORNEY GENERAL

Hon. M. O. Flowers
Secretary of State
Austin, Texas

Attention of Mr. K. King

Opinion No. O-1925

Re: Are companies such as John
Hancock Mutual and Jefferson
Standard subject to the Real
Estate Dealers License Act?

Dear Sir:

Your request for an opinion on the above stated ques-
tion has been received by this department.

Your letter reads as follows:

"It is the desire of this office to secure an
opinion from the Attorney General as to whether
companies such as John Hancock Mutual and Jefferson
Standard, etc., are subject to the Real Estate Deal-
ers License Act.

"These companies operate their own loan and
sales department, paying straight salaries instead
of commissions."

You further inform us that Jefferson Standard is a
regular life, health and accident insurance company, organized
under Chapter 3, Title 78 of Vernon's Civil Annotated Statutes.
Companies such as John Hancock Mutual and the Jefferson Stand-
ard make loans upon first liens upon real estate and occasion-
ally it is necessary for such companies to foreclose such liens
and sell the property obtained by such foreclosures.

Article 4818, Vernon's Civil Annotated Statutes, pro-
vides in part:

"Mutual life insurance companies shall invest
their funds in accordance with the provisions of the
third chapter of this title, concerning investments
of life insurance companies in this State;...."

Article 4725, Vernon's Civil Annotated Statutes, set-
ting out the securities in which a life insurance company organ-
ized under the laws of this State may invest or loan money,
provides among other things:

"....It may also make loans upon first liens upon real estate, the title to which is valid and the value of which is forty (40%) per cent more than the amount loaned thereon; or upon first liens upon leasehold estates in real property and improvements situated thereon, the title to which is valid, and the leasehold has not less than thirty (30) years to run before expiration; provided that the duration of any loan upon such leasehold estates shall not exceed a period of ten (10) years; or upon any obligation secured collaterally by any such first liens..."

House Bill No. 17, as passed by the 46th Legislature, commonly known and cited as "The Real Estate Dealers License Act" reads in part as follows:

"Sec. 2. The following terms shall, unless the context otherwise indicates, have the following meanings:

"(a). (1). The term 'Real Estate Dealer' shall include every person or company, other than a salesman, and licensed and registered attorneys, who for another or others for compensation or other valuable consideration, or who with the intention or in the expectation or upon the promise of receiving or collecting compensation or other valuable consideration, lists for sale, sells, exchanges, buys, or rents, or offers, or attempts, or agrees to negotiate a sale, exchange, purchase, or rental of an estate or interest in real estate, or collects, or offers, or attempts, or agrees to collect rent for the use of real estate, or negotiates, or offers, or attempts, or agrees to negotiate a loan, secured or to be secured by mortgage or other incumbrance upon or transfer of real estate; or auctions, or offers, or attempts, or agrees to auction any real estate; or appraises, or offers, or attempts, or agrees to appraise any real estate; or who advertises, or holds itself, himself, or themselves out as engaged in the business of selling, exchanging, buying, renting, or leasing real estate, or assists or directs in the procuring of prospects, or the negotiation or closing of any transaction which does or is calculated to result in the sale, exchange, leasing, or renting of any real estate, or who buys or offers to buy, sells or offers to sell, or otherwise deals in options on real estate or in the improvements thereon.

"(2). The term 'Real Estate Dealer' shall also include any person or company employed by or on behalf of the owner or owners of lots or other parcels of real estate at a stated salary, or upon a commission, or upon a salary and commission basis, or otherwise, to sell such real estate in any parts thereof, in lots or other parcels, and who shall sell or exchange, or offers, or attempts, or agrees to negotiate the sale or exchange of any such lot or parcel of real estate; provided, however, if the owner of lots or other parcels is engaged in the business of buying, selling, exchanging, leasing, renting of property and holding himself out as a full or part-time dealer in real estate, then such person employed by said owner may be licensed as a salesman of said owner if said owner has been licensed as a dealer in real estate.

"(3). The term 'Real Estate Dealer' shall include any person or company engaged in the business of buying, selling, exchanging, leasing, renting of property on his or its own account and holding himself or itself out as a full or part-time dealer in real estate.

"(b). The term 'Real Estate Salesman' shall mean and include any person or company employed or engaged by or in behalf of a licensed real estate dealer to do or deal in any act, acts, or transactions set out and comprehended by the definition of a 'Real Estate Dealer' in Section 2, Subsection (a) of this Act.

"(c). If the sense requires it, words in the present tense include the future tense; in the masculine gender, include the feminine or neuter gender; in the singular number, include the plural number; in plural number include the singular number; 'and' may be read 'or'; and 'or' may be read 'and.'

"Sec. 3. The provisions of this Act shall not apply to, and the terms 'Real Estate Dealer' and 'Real Estate Salesman', as above defined, shall not include:

"(a). Any person or company who, as owner or lessor, shall perform any of the acts set out

in Section 2, Subdivision (a) with reference to property owner or leased by them, or to the regular employees thereof with reference to the property owner or leased by such person or company where such acts are performed in the regular course of, or as incident to, the management of such property and the investment therein, unless such person or company is engaged in the business of buying, selling, exchanging, leasing, or renting of property and holding himself or itself out as a full or part-time dealer in real estate.

"(b). Persons acting as an attorney in fact under a duly executed power of attorney from the owner authorizing the final consummation by performance of any contract for the sale, leasing, or exchange of real estate; services rendered by an attorney at law, receiver, trustee in bankruptcy, administrator, or executor, or any person doing any of the acts specified in Section 2, Subdivision (a) of this Act under order of any court; a trustee acting under a trust agreement, deed of trust, or will, or the regular salaried employees thereof.

"(c). Any person, partnership, or corporation who has secured a license under Texas Securities' Act, House Bill No. 521, Regular Session, Forty-fourth Legislature.

"Sec. 4. Any one act set out in Section 2, Subdivision (a) of this Act when performed for another or others for compensation or valuable consideration or who with the intention or in the expectation or upon the promise of receiving or collecting compensation shall constitute a person or company performing, offering or attempting to perform such act or acts, a real estate dealer or a real estate salesman within the meaning of this Act."

The provisions of the above mentioned act do not apply to, and the terms "Real Estate Dealer" and "Real Estate Salesman" as above defined by the statute, do not include any person or company who, as owner or lessor, perform any of the acts set out in Section 2, Subdivision (a) with reference to property owned or leased by them, or to the regular employees thereof with reference to the property owned or leased by such person or company where such acts are performed in the

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regular course of, or as incident to, the management of such property and the investment therein, unless such person or company is engaged in the business of buying, selling, exchanging, leasing, or renting of property and holding himself or itself out as a full or part-time dealer in real estate. We believe that the buying, selling, exchanging, leasing, or renting of property obtained under foreclosure proceedings by the companies above named or like companies would be acts performed in the regular course of, or as incident to, the management of such property and the investment therein.

Therefore, you are respectfully advised that it is the opinion of this department that the John Hancock Mutual Insurance Company and the Jefferson Standard Life, Health and Accident Insurance Company and like companies when engaged in the above mentioned acts would not be subject to the Real Estate Dealers License Act.

Trusting that the foregoing fully answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/ Ardell Williams
Ardell Williams, Assistant

APPROVED FEB 16, 1940
/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED: OPINION COMMITTEE
BY: BWB, CHAIRMAN

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