

Real Estate Agents & Brokers - Tread

Carefully Around the Unauthorized

Practice of Law

AUTHOR: ZACHARY MERKLE

What does this provision in the standard real estate contract mean? How long do I have to inspect the property before my contingency lapses? Under what circumstances do my other contingencies kick in or lapse? What does Paragraph 10(2) mean, or line 46 on page 2? Often these questions go deeper - clients want to know their *remedies* for real or perceived injustices. The buyers back out of a transaction, can they do that? The seller did not disclose that leak we learned about 2 weeks after moving in - what can we do? What exactly do we need to disclose to the buyers?

Where is that line that a real estate agent or broker cannot cross? When should an agent or broker refer a client to an attorney? What is the "unauthorized practice of law"? Unfortunately, that question will vary by state - each state has its own rules on the "unauthorized practice of law." The easy cases are representing another in court - obviously, one needs to be a licensed attorney to represent another in court. But there are a whole range of out-of-court activities that also fall within the practice of law.

In Missouri, you might read *Hargis v. JLB Corp.*, 357 S.W.3d 574, 578 (Mo. banc 2011) (read the free version on Google Scholar at this link). The Hargis court explained that the Supreme Court of Missouri is the "sole arbiter" of what constitutes the practice of law. As relevant to real estate professionals, the definition of "law business" in RSMo § 484.010, referenced by the *Hargis* Court, is somewhat helpful:

- the advising or counseling for a valuable consideration of any person, firm, association, or corporation as to any secular law or the drawing or the procuring of or assisting in the drawing for a valuable consideration of any paper, document or instrument affecting or relating to secular rights **or the doing of any act for a valuable consideration in a representative capacity, obtaining** or tending to obtain or securing or tending to secure for any person, firm, association or corporation **any property or property rights whatsoever.**

Isn't that what real estate agents and brokers *do*? The line the Supreme Court has generally drawn in *Hargis* (and prior cases) is the distinction between filling in blanks on a form prepared by a lawyer (OK for a non-lawyer) and actually preparing the document from scratch or substantially modifying it (NOT OK for a non-lawyer to do). Another line that has been drawn is charging a separate fee for filling out a legal document (such as a promissory note or deed of trust) because that fee-for-drafting is too much like "legal drafting as a business rather than on the business of being a real estate broker."

In practice, many questions real estate agents face lie in a grey area, particularly for newer real-estate professionals. Be very careful about opining on the effect of legal language, advising on the remedies clients may or may not have, or deviating from the form language in a real-estate sale contract. You might be nearing that forbidden "unauthorized practice of law" line. And, if the underlying deal goes wrong, or if your client feels wronged (rightfully or wrongfully) by your conduct, you might find yourself in legal jeopardy. Be careful out there and, when in doubt, ask a lawyer.