

REAL ESTATE COMMISSION:: Broker or agent may represent seller or buyer in the sale of restricted property, where the buyer is informed that the property is subject to certain restrictions.

November 27, 1942

11-30



Missouri Real Estate Commission
Jefferson City, Missouri

Attention: Mr. J. W. Hobbs,
Executive Secretary

Dear Sir:

Your request for an opinion submitted in response to a letter from Carl Roman Johnson of Kansas City, Missouri, has been received.

Mr. Johnson's letter reads as follows:

"In the light of your previous rulings on the sale of restrictive property to members of the Negro race, and in view of what has been represented to be the understanding of certain dealers in the light of your rulings, will you be kind enough to advise whether or not the following statement or clause in a real estate sales contract will remove the objection to sales in restricted areas:

"It is agreed and understood by both buyer and seller of the above described property that there is a purported restrictive covenant on said property which prohibits the sale and conveyance of said property

to Negroes and persons of African descent and this sale is being promoted and consummated with full knowledge of this purported restriction.'

"I have in mind that above clause can be inserted between owners and agents and could also be made a part of the real estate contracts in the event one is signed or negotiated."

In some instances restrictions as to the sale or conveyance of property to negroes and persons of African descent may not be enforced. As a general rule, such a restrictive covenant is enforceable, but in case of changes in the neighborhood of the property, which changes are so radical as to practically destroy the essential objects and purposes of the restrictive covenant, then such a covenant may not be enforced. It was so held in the case of Hall et al v. Koehler et al, 148 S. W. (2d) 489, pars. 3-5, where the court said:

"Rombauer et al. v. Compton Heights Christian Church et al., 328 Mo. 1, 40 S. W. 2d 545, was to enjoin violation of restrictive covenants. In that case it was said (40 S. W. 2d loc. cit. 553): 'No hard and fast rule can be laid down as to when changed conditions have defeated the purpose of restrictions, but it can be safely asserted the changes must be so radical as practically to destroy the essential objects and purposes of the agreement. Thus an urban tract may be dedicated to residential use under certain restrictions indicating an intention to establish a secluded district

for high-class homes. It is inevitable that with the lapse of time the march of progress and the shifting and growth of the city the forces of disintegration will be at work, the houses architecturally and otherwise will become more and more out of date, other residential districts still more pretentious may be laid out, and changes may crowd about, outside. But the parties must be deemed to have anticipated these things and to have intended to combat them as far as possible. And so, if later the necessity of invoking the restrictive covenants arises, the mere fact that, because of changed conditions, the restrictions are less valuable than they once were, will not prevent their enforcement if the district still retains its essential character and the restrictions remain of substantial value.'

"The above excerpt from the Rombauer case is, we think, applicable to the present case. It may be that, because of changed conditions, the restriction as to the use of and kind of buildings in the Hinkle Place addition, is less valuable to lot owners in the addition than formerly, but, under the record here, there is no escape from the conclusion that the addition itself 'still retains its essential character (of a residential district) and the restrictions remain of substantial value.'"

Also, the same holding was had in the case of Porter v. Pryor, 164 S. W. (2d) 353, par. 1, where the court said:

"There was no contention made in the present case that the restrictive agreement was contrary to public policy. The contention is made as was in the Johnson case that conditions have so changed in the last few years respecting negro occupancy in the general neighborhood of the restricted area as to make the enforcement of the restrictive agreement inequitable and unjust. No hard and fast rule can be laid down as to when changed conditions may defeat the purpose of restrictions, 'but it can be safely asserted the changes must be so radical as practically to destroy the essential objects and purposes of the (restrictive) agreement.' Hall et al. v. Koehler et al., 347 Mo. 658, 148 S. W. 2d 489, loc. cit. 492."

The question as to whether or not changed conditions may destroy the restrictive agreement is a question of facts in each particular case. For that reason, the fact that the real estate is subject to a restrictive agreement is not entirely conclusive. In the letter above set out, the real estate agent, or broker, is merely carrying out the orders of his client, and since such a clause is included in the contract of sale there could be no fraud. Such a sale could be had between the owner without the intervening actions of a real estate broker or agent. It may or may not result in a lawsuit. Sec. 10, of the Missouri Real Estate Commission Act, Laws of Missouri, 1941, page 428, sets out eleven causes for the suspension or revocation of a license. In reading these eleven causes, we find no cause that would prohibit the real estate broker or agent from representing a client, whose property is under the restrictive covenant as to Negroes, in selling the same to a Negro, provided such a clause as set out in the letter is inserted in the contract of sale.

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CONCLUSION

It is, therefore, the opinion of this department that the license of a broker, or agent is not subject to suspension or revocation if he acts as broker or agent in the sale of property restricted against Negroes, if he, in the sale conveys the property to a Negro, where the buyer is informed in a written contract that the property is restricted against sale to Negroes, or persons of African descent.

Respectfully submitted

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APPROVED:

ROY McKITTRICK
Attorney General of Missouri

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