

Opinion No. 73-57

August 7, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Kenneth Miller Executive Secretary Real Estate Commission 505 Marquette, N.W.
Albuquerque, New Mexico

QUESTIONS

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May a licensed real estate broker or salesman representing the seller of real estate give a guarantee of service; or repair of the major systems of the home including, but not limited to, heating electrical, plumbing, air conditioning or other guarantee of free service, etc., as an inducement to purchase the property?

CONCLUSION

No, but see analysis.

OPINION

{*113} ANALYSIS

New Mexico Statute Annotated 67-24-29 provides that the Real Estate Commission may refuse to license and may suspend or revoke the license of one who is guilty of:

(c) Paying or receiving any rebate, profit, compensation or commission from any person other than his principal.

From information now available some other states have apparently approved the use of "Palace Guard" or other similar servicing firms in the form of advertisement (attached please find such examples) which guarantees for one year the major systems of your home including "central heating, hot water heater, duct work, plumbing fixtures, electrical system, plumbing system, sump pump". This advertisement would lead a prospective purchaser to believe and rely on the premise that the real estate broker is so providing and guaranteeing these services by "Palace Guard", or other servicing firms offering such services, at the {*114} expense of the real estate broker involved.

It is our opinion that the reasoning in the Attorney General's Opinion No. 63-28 dated April 1, 1963 and 463c, page 68 of the State of New Mexico Real Estate License Law Manual covers the above sales gimmick which could be used in an effort to induce real estate sales.

This type of advertising as outlined above, or offer, would violate the principal and agent relationship between the owner of real property and the real estate broker.

Any offer by the real estate broker or his agent holding out to the public that the real estate broker is giving consideration of any kind for the benefit of the purchaser is in violation of New Mexico Statute Annotated 67-24-29.

The statute does not, however, prohibit the owner of the property (principal) from giving to the purchaser of the property any of the items listed in the question.

Such a contract for services as that offered by Palace Guard or other servicing firm offering this type of service would be acceptable as long as any advertisement or offer clearly states that this service is provided at the expense of the owner.

In summary it is our opinion that the prohibition of Section 67-24-29(c) is applicable to all of the items enumerated in the question when it can be shown that the real estate broker or salesman gave one or more of the items listed to the purchaser of the property as an integral part of a transaction involving to the purchase and sale of the property.

By: Attorney General