

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 00-67

December 15, 2000

RE: May mortgage company examiner sell real estate?

DECISION: Yes, within limitations.

This opinion is in response to your October 24, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 15, 2000, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Department of Financial Institutions (the "Department") is responsible for licensing mortgage companies and brokers. The Department routinely examines mortgage companies and brokers every 18 to 24 months unless a situation dictates otherwise. A schedule of mortgage companies and brokers to be examined is prepared by the Department ninety days prior to the commencement of the examinations. At least thirty days prior to the beginning of an examination, all mortgage companies and brokers are notified of the examiner who will be conducting the examination. The examiner randomly selects a percentage of a mortgage company's or broker's closed loan files for examination. An examiner, independent of the examiner who conducts the examination and writes the report, reviews the report of the examination to insure technical correctness, objectivity, and fairness. You ask whether an examiner of mortgage companies and brokers may sell real estate if he is not involved in seeking a loan for the purchaser of the real estate.

KRS 11A.020(1)(a) provides:

- (1) No public servant, by himself or through others, shall knowingly:
 - (a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;

The Commission believes that the examiner is not prohibited from selling real estate in addition to his position as a real estate examiner. However, the Commission cautions the examiner not to have any involvement as a real estate agent in seeking loans from mortgage companies or brokers that he may be scheduled to examine.

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Additionally, in order to be independent in his review of mortgage companies and brokers, the examiner should not examine any mortgage companies or brokers from whom he is aware that his private clients have sought or are seeking a loan for property. The Commission believes that the mortgage company or broker's approval or denial of such loans may affect the independence of the examiner's judgement in such examinations. Furthermore, the mortgage company or broker may feel pressure to award the loan if the company is aware that an examiner is the real estate agent for the property and he also is examining the company as part of his official position.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Bertie Oldham Salyer, M.A., A.M.E.