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PROFESSIONS AND BUSINESSES Real Estate Brokers and Salespersons: Require Real Estate Brokers to Pay Commission Only to Licensees Who Have Assigned Their License to the Broker's Firm; Ensure a Qualified Broker Will Be Responsible in All Real Estate Business

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# PROFESSIONS AND BUSINESSES

Real Estate Brokers and Salespersons: Require Real Estate Brokers to Pay Commission Only to Licensees Who Have Assigned Their License to the Broker's Firm; Ensure a Qualified Broker Will Be Responsible in All Real Estate Businesses

CODE SECTIONS: O.C.G.A. §§ 43-40-6, -15, -18 (amended)

BILL NUMBER: HB 1227 ACT NUMBER: 1176

SUMMARY: The Act provides procedures for ensuring that

real estate brokerage firms will not pay compensation to a licensed broker unless the broker is assigned to the firm prior to the transaction. The Act requires each brokerage firm to be managed by a real estate broker or qualifying real estate broker who is ultimately responsible for this license assignation. The Act further provides that in any given business enterprise, a qualified broker must be able to bind the business in his capacity either as

partner or as corporate officer.

EFFECTIVE DATE: July 1, 1994

## History

A common practice within the real estate industry is for real estate agents to operate "under another license." Simply stated, this practice refers to a real estate agent's use of another agent's license to receive compensation for work. If agents operate in this fashion, they are able to conduct more transactions without affiliating with any particular brokerage firm. Traditionally, real estate agents who work together on a sale split the commission from the transaction. However, one agent is often not authorized by a brokerage firm to conduct business on its behalf and thus the firm has no control over this agent. Therefore, the firm does not know the status of that agent's license and whether the agent is regulated by the Real Estate Commission (the Commission). This legislation sought to redress the rampant problem stemming from

<sup>1.</sup> Telephone Interview with Rep. Jimmy Skipper, House District No. 137 (Apr. 6, 1994) [hereinafter Skipper Interview].

<sup>2.</sup> Id.

<sup>3.</sup> Id.

<sup>4.</sup> Id.

<sup>5.</sup> *Id*.

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individuals operating within the real estate industry without the proper license.<sup>6</sup>

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1994]

### License Assignation

The Act amended former Code section 43-40-18(c)(5) by requiring a licensee to assign his license to the broker or brokerage firm with which the licensee conducts business prior to performing the transaction. This part of the original bill went through the amendment and substitute process unchanged. Under former subsection (c)(5) a qualified broker was responsible only for ensuring that all persons involved in transactions were licensed. The Act now requires an actual assignation of a license by the licensee before compensation may lawfully be paid. As stated above, the primary rationale for this change was to ensure that all individuals conducting real estate transactions requiring licensure are licensed by the Commission.

## Qualifying Brokers for All Business Enterprises

The Act further amends Code section 43-40-18(e) by outlining the requirements for business enterprises operating in Georgia as real estate brokerage firms. In order to operate a real estate brokerage firm in Georgia, one must be licensed by the Real Estate Commission. Although seemingly complex, this Act simply addresses every combination of business structure and mandates that a qualified broker be responsible in all situations. In the case of a sole proprietorship, the owner must be a qualified real estate broker. Similarly, in a partnership situation the qualifying broker must be a partner. If the partnership is one in which all partners are corporations, the qualifying broker must be an officer in one of the corporations and must be able to

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<sup>6.</sup> Id.

<sup>7.</sup> O.C.G.A. § 43-40-18(c)(5) (1994).

<sup>8.</sup> See HB 1227, as introduced, 1994 Ga. Gen. Assem.; HB 1227 (HCS), 1994 Ga. Gen. Assem.; HB 1227 (SCS), 1994 Ga. Gen. Assem.; O.C.G.A. § 43-40-18(c)(5) (1994).

<sup>9.</sup> A "qualified broker" is a person meeting the qualifications outlined in O.C.G.A. § 43-40-8(b). O.C.G.A. § 43-40-8(b) (1991). A qualified broker must have served actively as a licensed salesperson for three years and have completed sixty hours of study approved by the Commission. *Id.* § 43-40-8(b)(4), (6) (1991).

<sup>10. 1989</sup> Ga. Laws 1619 (codified at O.C.G.A. § 43-40-18(c)(5) (1991)).

<sup>11.</sup> O.C.G.A. § 43-40-18(c)(5) (1994).

<sup>12.</sup> Skipper Interview, supra note 1.

<sup>13.</sup> O.C.G.A. § 43-40-7 (1994); Skipper Interview, supra note 1.

<sup>14.</sup> Skipper Interview, supra note 1.

<sup>15.</sup> O.C.G.A. § 43-40-18(e) (1994).

<sup>16.</sup> Id.

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bind both the corporation and the partnership.<sup>17</sup> In a limited partnership situation, the general partner must be a qualified broker.<sup>18</sup> Of course if the general partner in a limited partnership is a corporation, then the qualifying broker must be an officer of the corporation and such officer's actions must bind the corporation and the general partner.<sup>19</sup> In a limited liability company<sup>20</sup> operating as a brokerage firm, the qualifying broker must be a member.<sup>21</sup> Finally, in a corporation, the qualifying broker must be an officer of the corporation.<sup>22</sup>

The basic thrust of this amendment was to have a qualified broker on hand in any given business enterprise who will be responsible for implementing the regulations of the Real Estate Commission.<sup>23</sup> The amendment thus expanded the scope of the original subsection (e) in order to keep up with current business structures in the state.<sup>24</sup> The amendments to this Act are largely "house-cleaning" measures which ensure each broker or brokerage firm operating in Georgia has a responsible qualified broker to answer to the Real Estate Commission.<sup>25</sup>

F. Faison Middleton, IV

<sup>17.</sup> Id.

<sup>18.</sup> Id.

<sup>19.</sup> Id.

<sup>20.</sup> See Legislative Review, 10 GA. St. U. L. REV. 79 (1993).

<sup>21.</sup> Id.

<sup>22.</sup> Id.

<sup>23.</sup> Skipper Interview, supra note 1.

<sup>24.</sup> Id.

<sup>25.</sup> Id.