Georgia State University Law Review

Volume 11
Issue 1 *October 1994*

Article 23

10-1-1994

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

F. Faison Middleton

Follow this and additional works at: http://scholarworks.gsu.edu/gsulr

Part of the Law Commons

Recommended Citation
Middleton, F. Faison (1994) "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," *Georgia State University Law Review*: Vol. 11: Iss. 1, Article 23.
Available at: http://scholarworks.gsu.edu/gsulr/vol11/iss1/23

This Peach Sheet is brought to you for free and open access by the College of Law Publications at ScholarWorks @ Georgia State University. It has been accepted for inclusion in Georgia State University Law Review by an authorized administrator of ScholarWorks @ Georgia State University. For more information, please contact scholarworks@gsu.edu.

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."[1] Simply stated, this practice refers to a real estate agent's use of another agent's license to receive compensation for work.[2] If agents operate in this fashion, they are able to conduct more transactions without affiliating with any particular brokerage firm.[3] 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.[4] 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).[5] This legislation sought to redress the rampant problem stemming from

1. Telephone Interview with Rep. Jimmy Skipper, House District No. 137 (Apr. 6, 1994) [hereinafter Skipper Interview].
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*

Published by ScholarWorks @ Georgia State University, 1994
HeinOnline -- 11 Ga. St. U. L. Rev. 240 1994-1995

individuals operating within the real estate industry without the proper license.[6]

HB 1227

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.[7] This part of the original bill went through the amendment and substitute process unchanged.[8] Under former subsection (c)(5) a qualified broker[9] was responsible only for ensuring that all persons involved in transactions were licensed.[10] The Act now requires an actual assignation of a license by the licensee before compensation may lawfully be paid.[11] 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.[12]

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.[13] Although seemingly complex, this Act simply addresses every combination of business structure and mandates that a qualified broker be responsible in all situations.[14] In the case of a sole proprietorship, the owner must be a qualified real estate broker.[15] Similarly, in a partnership situation the qualifying broker must be a partner.[16] 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

6. *Id.*
7. O.C.G.A. § 43-40-18(c)(5) (1994).
8. *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).
9. 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).
10. 1989 Ga. Laws 1619 (codified at O.C.G.A. § 43-40-18(c)(5) (1991)).
11. O.C.G.A. § 43-40-18(c)(5) (1994).
12. Skipper Interview, *supra* note 1.
13. O.C.G.A. § 43-40-7 (1994); Skipper Interview, *supra* note 1.
14. Skipper Interview, *supra* note 1.
15. O.C.G.A. § 43-40-18(e) (1994).
16. *Id.*

HeinOnline -- 11 Ga. St. U. L. Rev. 241 1994-1995

bind both the corporation and the partnership.[17] In a limited partnership situation, the general partner must be a qualified broker.[18] 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.[19] In a limited liability company[20] operating as a brokerage firm, the qualifying broker must be a member.[21] Finally, in a corporation, the qualifying broker must be an officer of the corporation.[22]

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.[23] The amendment thus expanded the scope of the original subsection (e) in order to keep up with current business structures in the state.[24] 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.[25]

F. Faison Middleton, IV

---

17. *Id.*
18. *Id.*
19. *Id.*
20. *See Legislative Review,* 10 GA. ST. U. L. REV. 79 (1993).
21. *Id.*
22. *Id.*
23. Skipper Interview, *supra* note 1.
24. *Id.*
25. *Id.*

HeinOnline -- 11 Ga. St. U. L. Rev. 242 1994-1995