

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

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### Recommended Citation

F. F. Middleton, *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*, 11 GA. ST. U. L. REV. (1994).

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

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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.*

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

### HB 1227

#### *License Assignment*

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

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

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*

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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.*