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April 8, 2008

Opinion No. 08-89

Activities that a Licensed Real Estate Broker May Perform Without Having an Auctioneer's License

QUESTIONS

1. Is a licensed real estate broker, as defined under Tenn. Code Ann. § 62-13-102(4)(A), who does not conduct or offer to conduct the auction sale of real property required to have an auctioneer's license if the broker lists or shows real estate which is to be sold at auction by an auctioneer who is properly licensed to conduct real estate auctions in Tennessee?

2. Is a real estate broker required to have an auctioneer's license to (a) solicit property to be sold by a licensed auctioneer at auction or (b) refer the broker's client to an auctioneer who is properly licensed to conduct real estate auctions in Tennessee for an auction sale of the listed property?

3. Under Tenn. Code Ann. § 62-13-102(4)(A), what does the language "auction or offer to auction" authorize an individual licensed under that part to do?

OPINIONS

1. No. A licensed real estate broker is not required to have an auctioneer's license if the broker lists or shows real estate which is to be sold at auction by a licensed auctioneer.

2. No. A licensed real estate broker is not required to have an auctioneer's license to solicit property to be sold by a licensed auctioneer at auction or to refer the broker's client to a licensed auctioneer.

3. Tenn. Code Ann. § 62-13-102(4)(A) does not "authorize" a licensed broker to do any activity. This provision merely defines the term "broker" and conveys the breadth of activities licensed brokers perform in Tennessee. Because a licensed auctioneer is required to have a broker's license, it follows that the definition of "broker" would include those who "auction or offer to auction" real estate.

ANALYSIS

1. Pursuant to Tenn. Code Ann. § 62-13-301 (2007), a real estate broker in Tennessee must have a real estate broker's license.

> It is unlawful for any person, directly or indirectly, to engage in or conduct, or to advertise or claim to be engaging in or conducting the business, or acting in the capacity of a real estate broker . . . within this state, without first obtaining a license as such broker . . . .

A "broker," as defined in Tenn. Code Ann. § 62-13-102(4)(A) (2007), is

> any person who for . . . valuable consideration . . . solicits, negotiates or attempts to solicit or negotiate the listing, sale, purchase, exchange, lease or option to buy, sell, rent or exchange for any real estate or of the improvements thereon . . . , collects rents or attempts to collect rents, auctions or offers to auction, or who advertises or holds out as engaged in any of the foregoing[.]

Although an auctioneer in Tennessee must have a real estate broker's license and an auctioneer's license, only in certain instances is a real estate broker required by state law to have an auctioneer's license:

> It is unlawful for any person to:
>
> (1) Act as, or advertise or represent to be, an auctioneer, apprentice auctioneer, or firm without holding a valid license issued by the commission under this chapter, or prior state law; or
>
> (2) Conduct, or offer to conduct, an auction of real property unless such person is duly licensed as an auctioneer or apprentice auctioneer, and as a broker or affiliate broker under the provisions of the Tennessee Real Estate Broker License Act of 1973, compiled in chapter 13 of this title; provided, however, with respect to the authority of an apprentice auctioneer to conduct, or offer to conduct, an auction of real property, that the auctioneer for whom the apprentice auctioneer is employed for such purposes must be on the premises of such property during the auction. ***This subdivision shall not be construed to require ringpersons or other persons not vocally conducting an auction to be duly licensed as auctioneers, nor to be duly licensed under chapter 13 of this title unless such ringpersons or other persons act as an affiliate broker or broker within the meaning of chapter 13 of this title.***

Tenn. Code Ann. § 62-19-102(a) (2007) (emphasis added). The plain language of Tenn. Code Ann. § 62-19-102(a) (2007) states the two instances in which a real estate broker is legally required to have an auctioneer's license in Tennessee. First, the broker must have an auctioneer's license if the

broker "[a]ct[s] as, or advertise[s] or represent[s] to be, an auctioneer, apprentice auctioneer, or firm[.]" Tenn. Code Ann. § 62-19-102(a)(1) (2007). Second, the broker is required to have an auctioneer's license if the broker "[c]onduct[s], or offer[s] to conduct, an auction of real property unless . . . . [the broker is] ***not vocally conducting*** an auction[.]" Tenn. Code Ann. § 62-19-102(a)(2) (2007) (emphasis added). In other words, as long as a broker does not vocally conduct an auction, he or she is not required to have an auctioneer's license under Tenn. Code Ann. § 62-19-102(a)(2) (2007).

By explicitly stating when a broker must have an auctioneer's license, the General Assembly effectively states when that license is not required. A broker is not required to have an auctioneer's license unless the broker acts as, advertises, or represents himself or herself to be an auctioneer, apprentice auctioneer, or auction firm or the broker vocally conducts an auction. Tenn. Code Ann. § 62-19-102(a) (2007). Thus, a broker is not required to have an auctioneer's license to list or show real estate which is to be sold at auction by a licensed auctioneer.

2. For the same reasons described above, a broker is not required to have an auctioneer's license to solicit property to be sold by a licensed auctioneer at auction or to refer the broker's client to a licensed auctioneer.

3. Tenn. Code Ann. § 62-13-102(4)(A) does not "authorize" a licensed broker to do any activity. This provision merely defines the term "broker" and conveys the breadth of activities licensed brokers perform in Tennessee. Because a licensed auctioneer is required to have a broker's license, it follows that the definition of "broker" would include those who "auction or offer to auction" real estate.

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