

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

September 16, 2019

Opinion No. 19-15

Scope of Exemptions in the Tennessee Real Estate Broker License Act

Question 1

Does “owner” in Tenn. Code Ann. § 62-13-104(a)(1)(A), which is part of the Tennessee Real Estate Broker License Act, include corporations, limited liability companies, limited liability partnerships, or other business entities?

Opinion 1

Yes. The context makes clear that “owner” refers to a “person” who owns or leases real estate, and for purposes of § 62-13-104 “person” is defined as “any natural person, corporation, company, partnership, firm or association.” Tenn. Code Ann. § 62-13-104(a)(1)(A), (b)(1)(B). Thus, “owner” includes corporations, limited liability companies, limited liability partnerships, and other business entities, all of which may be “owners” covered by the exemption provided for in § 62-13-104(a)(1)(A).

Question 2

Can business entities other than corporations—such as limited liability companies and partnerships—qualify for the “corporate exemption” in Tenn. Code Ann. § 62-13-104(a)(1)(F)?

Opinion 2

No. Business entities other than corporations qualify, if at all, only for the “owner exemption” provided for in Tenn. Code Ann. § 62-13-104(a)(1)(A).

Question 3

Would a corporate entity that owns less than 100% of a particular property be exempt from the broker license requirement with respect to that property?

Opinion 3

The corporate entity would be exempt from the license requirement only with respect to activities involving the specific portion of the property it owns. The license requirement would apply to any actions involving the property as a whole or specific parts of the property that the corporate entity did not own.

Question 4

Is a lessee of property an “owner” of real estate who may qualify for the “owner exemption” in subsection (a)(1)(A)?

Opinion 4

Yes, but only with respect to the lessee’s ownership interest in the lease, not with respect to the entire property.

Question 5

Does an individual or entity who owns a percentage of a limited liability company, which in turn owns 100% of a piece of real estate, qualify for the “owner exemption”?

Opinion 5

No.

ANALYSIS

Under the Tennessee Real Estate Broker License Act of 1973 (the “Act”), “persons” who act as real estate brokers in Tennessee must be licensed by the Tennessee Real Estate Commission. *See* Tenn. Code Ann. §§ 62-13-101 to -604; Tenn. Att’y Gen. Op. 14-27 (Mar. 6, 2014). “Person” as used in the Act includes both individuals and specified business entities. *See* Tenn. Code Ann. § 62-13-102(13).

Any person who falls within the statutory definition of “broker” in Tenn. Code Ann. § 62-13-102(4) must obtain a license to act as a broker unless one of the exemptions in § 62-13-104 applies. *See id.* §§ 62-13-103, -301.

Section 62-13-104(a) establishes six exemptions from the license requirement. Relevant here are the “owner exemption” and the “corporate exemption.” The owner exemption in subsection (a)(1)(A) provides that the Act does not apply to “[a]n owner of real estate with respect to property owned or leased by such person.” Similarly, the corporate exemption in subsection (a)(1)(F) provides that the Act does not apply to foreign or domestic corporations when they are “acting through an officer duly authorized to engage in real estate transactions” and “the transaction occurs as an incident to the management, lease, sale or other disposition of real estate owned by the corporation.” But this corporate exemption does *not* apply to “a person who performs an act described in § 62-13-102(4)(A) [i.e., the acts that define “broker”], either as a vocation or for compensation, if the amount of the compensation is dependent upon, or directly related to, the value of the real estate with respect to which the act is performed.” *Id.* § 62-13-104(a)(1)(F).

In addition to the six absolute exemptions in subsection 104(a), subsection 104(b) provides a qualified exemption from the license requirement for persons who provide a “vacation lodging service,” as defined by the Act. A vacation lodging service is not “required to have a licensed real

estate broker supervising the business” but is “required to have a vacation lodging service firm license.” *Id.* § 62-13-104(b)(2).

1. Corporations, limited liability companies (LLCs), limited liability partnerships (LLPs), and other business entities are “owners” as that word is used in Tenn. Code Ann. § 62-13-104(a)(1)(A). The context makes clear that “owner” in subsection (a)(1)(A) refers to a “person” who owns or leases real estate, and for purposes of § 62-13-104 “[p]erson means any natural person, corporation, company, partnership, firm or association.” Tenn. Code Ann. § 62-13-104(a)(1)(A), (b)(1)(B). Thus, “owner” includes corporations, LLCs, LLPs, and other business entities, all of which may be “owners” covered by the exemption provided for in § 62-13-104(a)(1)(A).

Accordingly, the owner exemption applies to a corporation, LLC, LLP, or other business entity with respect to property owned or leased by it. That subsection (a)(1)(F) provides a separate, specific exemption for corporations and their officers does not alter that conclusion. As explained below, the corporate exemption in subsection (a)(1)(F) applies to a different set of entities in distinct circumstances and furthers separate interests. Nothing in the Act indicates that the exemptions are mutually exclusive, or that more than one exemption could not apply in particular circumstances.

In sum, the owner exemption in subsection (a)(1)(A) thus exempts all “owners”—including corporations, LLCs, LLPs, and other business entities—from the broker license requirements of the Act. The owner exemption would also exempt a business entity that owns a vacation lodging service from the more limited requirement in § 62-13-104(b) that it have a vacation lodging service firm license. But the owner exemption in subsection (a)(1)(A), unlike the corporate exemption in subsection (a)(1)(F), exempts only the owner itself, not the owner’s agents, officers, or employees.

2. As this Office explained in a 2014 opinion, the corporate exemption in subsection (a)(1)(F) applies only to foreign or domestic corporations and does not apply to LLCs, LLPs, or other business entities. *See* Tenn. Att’y Gen. Op. 14-27 (copy attached).

3. A corporate entity that owns less than 100% of a parcel of real estate would be exempt from the license requirement under the owner exemption in subsection (a)(1)(A) only with respect to the portion of the property it owned. The owner exemption applies only to the “property owned or leased by such person.” Accordingly, an owner, whether a business or an individual, may engage in covered activities without a license only with respect to its specific portion of the property. Partial owners are not exempt from the license requirement with respect to real estate activities involving the entire parcel because that would necessarily involve property they did not own.

4. The owner exemption expressly applies to a lessee’s ownership interest in leased property. The license requirement “does not apply to[] [a]n owner of *real estate* with respect to the property owned or leased by such person.” Tenn. Code Ann. § 62-13-104(a)(1)(A) (emphasis added). And the Act defines “real estate” to include “leaseholds, as well as any other interest or estate in land.” *Id.* § 62-13-102(14). A lessee owns a leasehold in the property, and thus owns “real estate” within the meaning of the owner exemption. As explained above, however, a lessee

would be exempt from the license requirement only with respect to that leasehold and would not be exempt for broker activities involving ownership interests in the property held by others.

5. The owner exemption in subsection (a)(1)(A) applies only to “[a]n owner of real estate.” Under the plain meaning of the text, the exemption would not apply to an individual or entity who had an ownership interest in an LLC that itself was the owner of real estate. “Real estate” is limited in the Act to “interest[s] or estate[s] in land.” Tenn. Code Ann. § 62-13-102(14). A person who owns all or part of an LLC does not have any estate or interest in the real estate owned by the LLC. *See id.* § 48-215-101(a) (“A member has no interest in specific LLC property. All property transferred to or acquired by an LLC is property of the LLC itself.”). The owner of the LLC would thus not be an “owner of real estate” entitled to the owner exemption.

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