

OFFICE OF THE ATTORNEY GENERAL

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Licenses - Residents - Real Estate

Statute requiring that applicant to take real estate license examination be resident of the State of Alabama may violate Article 4, Section 2 and Amendment 14 of the United States Constitution; renewal of the real estate license does not require residence, however, non-resident licensee may not engage in any of the acts regulated by the statute.

Dear Mrs. Goodwin:

You have requested of this Office an opinion regarding the following question: "Is a person who otherwise qualifies for a license pursuant to the Alabama Real Estate License Law of 1951 as last amended, §§ 34-27-1, et seq., but is not a resident of Alabama entitled to be licensed pursuant to said statute?"

Your question is answered in the affirmative. There are five sections of the statute which have bearing upon this question. These, with their pertinent parts, are as follows:

I. Section 34-27-30.

It shall be unlawful for any person, partnership or corporation for a fee, commission or

other valuable consideration ... to list, sell, purchase, exchange, rent, provide rent list for a fee, lease, option or auction real estate or the improvements thereon, or to negotiate or attempt to negotiate any real estate transaction, advertise or hold himself out as engaged in the real estate business unless such person, ... is licensed ..."

II. Section 34-27-31(a).

"Licenses shall be granted to only persons who are trustworthy and competent to transact the business of a real estate broker or real estate salesman in such manner as to safeguard the interest of the public. Every applicant for a license as real estate broker or real estate salesman shall be a person who has not been convicted of a criminal offense involving moral turpitude in this or any other state and shall so state on his application. The applicant must be a person whose application or license has not been rejected or revoked in this state or any other state within two years prior to date of application on any grounds other than failure to pass the written examination. Each applicant for a license shall be a citizen of the United States and of at least 19 years of age."

III. Section 34-27-32(f).

"All applicants for a real estate license must be bona fide residents of this state prior to submitting application to take the examination, and shall submit evidence of such residence as required by the Real Estate Commission."

IV. Section 34-27-35(f).

"Each Licensee shall file, on or before August 31 of each ensuing year, a certificate of continuation in business on a form prescribed by the Alabama Real Estate Commission."

V. Section 34-27-3(a).

"It shall be unlawful for any person, partnership or corporation who is not a bona fide citizen and resident and a licensed broker or salesman in this state to perform any of the acts regulated by this chapter; ..."

The clear language of Section 34-27-32(f) is that a person submitting an application to take the examination shall also submit evidence that he is a resident of this state. However, similar provisions of similar laws have been held to be unconstitutional as violative of Article 4, Section 2 and the 14th Amendment of the United States Constitution. State v. Rose, 122 So. 225 at 238; but see dissent, State v. Rose, supra, at 239.

Once licensed the licensee has to file, on or before August 31 of each year, pursuant to Section 34-27-25(f) a certificate of continuation in business. However, Section 34-27-3(a) makes it unlawful for a person who is not a resident to perform any of the acts regulated by the statute, which acts are set forth in 34-27-30. Accordingly, a person who removes from the State of Alabama and is no longer a resident of the State of Alabama cannot engage, in Alabama, in any of the acts regulated by the law. It follows, therefore, that the licensee's certificate of continuation in business should show that the licensee ceased to engage in the business of real estate broker or real estate salesman in Alabama. However, the statute does not say that the certificate of continuation in business must show that the licensee is actively engaged in the business in Alabama and the specific qualifications of licensees set forth in Section 34-27-31(a) do not require residence in the State of Alabama. It does affirmatively require that the licensee be a citizen of the United States.

In view of the foregoing it is the opinion of this office that, once licensed, any person who otherwise qualifies to be a licensee may renew his license even though he has ceased to be a resident of the State of Alabama. Such a non-resident licensee could not, it must be noted, engage in any of the acts regulated by the statute except in accord with Section 34-27-3.

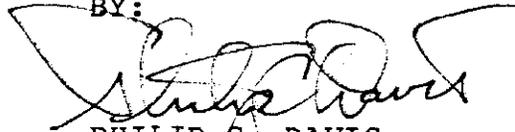
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I trust that the foregoing answers your question, if this office can be of further assistance to you, please let us know.

Yours very truly,

CHARLES A. GRADDICK
Attorney General

BY:

A handwritten signature in cursive script, appearing to read "Philip C. Davis", written over a horizontal line.

PHILIP C. DAVIS
Assistant Attorney General

CAG/PCD/pm