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OFFICE OF THE ATTORNEY GENERAL



CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

JAMES R. SOLOMON, JR.
DEPUTY ATTORNEY GENERAL

WILLIAM M. BEKURS, JR.
EXECUTIVE ASSISTANT

WALTER S. TURNER
CHIEF ASSISTANT ATTORNEY GENERAL

JANIE NOBLES
ADMINISTRATIVE ASSISTANT

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ADMINISTRATIVE BUILDING
64 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 834-5150

Mary L. Goodwin
Executive Director
Alabama Real Estate Commission
750 Washington Avenue
Montgomery, AL 36130

Real Estate Commission - Licenses
and Permits - Security

Securities company offering for
sale within Alabama, for a
commission, an interest in real
property as an investment may be
required to be licensed both under
the Alabama Real Estate License
Law, and the Securities Law.

Section 40-12-150, Code, does not
preclude the applicability of the
Real Estate License Law to a
securities company offering for
sale within Alabama real property
located outside of Alabama.

Securities broker may cooperate
with real estate broker in
handling the transactions
involving in the sale of
securities which include the sale
of real estate, and vice versa.

Dear Mrs. Goodwin:

You have requested of this office an opinion respecting
the following questions:

1. Is an Alabama Real Estate License required to
be held by a registered securities company or
its agents in order for that securities

company to sell, or negotiate the transfer of, within Alabama, an interest in real property located outside the State of Alabama when such interest is essentially an investment interest?

2. Does the applicability of Section 40-12-150 of the Code of Alabama 1975, as amended, preclude the applicability of the Alabama real estate license law (Section 34-27-1, et seq., Code of Alabama 1975, as last amended) to a securities company, which is, for a commission, selling, or negotiating the transfer of, within Alabama, real property located outside the State of Alabama?
3. If a real estate license is required in order for the agent of a registered securities company to, for a commission, sell, or negotiate the transfer of, within Alabama, an interest in real property located outside Alabama, and if such interest is integrated into a larger investment interest which includes regulated securities, must the entire investment interest be sold by a single broker possessing both a real estate license and a securities license, or may the responsibility, and consequently the commission, be divided among more than one agent of the securities company?

The statutes involved in a consideration of these questions are the Securities Act of Alabama, §§ 8-6-1, et seq., the Real Estate License Law, §§ 36-27-1, et seq., and the Revenue License Code, §§ 40-12-1, et seq., Code of Alabama 1975. The specific provisions of each of these statutes which bear upon these questions are found at §§ 8-6-2(3), (10) and (13), § 8-6-3(a); §§ 36-27-2(a)(2), § 36-27-3, § 36-27-30; and § 40-12-150, Code, supra.

Under the Securities Act a broker is defined as a dealer and a dealer is defined as "any person engaged in the business of effecting transactions in securities for the account of others or for his own account." Sections 8-6-2(3) and (13).

The term security is defined as "any note, stock, ... certificate of interest or participation in any profit-sharing agreement, ... investment contract...subscription or contracts covering or pertaining to the sale or purchase of beneficial interest in title to property, profits or earnings, or any right to subscribe any of the foregoing or any instrument of any kind, commonly known as a security." Section 8-6-2(10). Section 8-6-3(a) provides that "it is unlawful for any person to transact business in this State as a dealer or salesman for securities unless he is registered under this article."

Under the Real Estate License Law a broker is defined in § 24-27-2(a)(2) as "any person who, for a fee, commission or other valuable consideration, ... lists, sells, purchases, exchanges, ... leases, options or auctions real estate or the improvements thereon, or negotiates or attempts to negotiate any real estate transaction, ..." Section 34-27-3 provides that:

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

Section 34-27-30 provides that:

"It shall be unlawful for any person, partnership or corporation for a fee, commission or other valuable consideration ... to list, sell, purchase, exchange, rent, ... lease, option or auction real estate or the improvements thereon, or to negotiate or attempt to negotiate any real estate transaction, ... unless such person, partnership or corporation is licensed as a broker or salesman under the provisions of this chapter or is excluded from the operation of this chapter by other provisions hereof."

The pertinent provisions of the revenue statute, § 40-12-150 are as follows: "every person who shall sell or

shall offer to sell in this state any lots or lands situated in another state ... shall pay an annual license tax to the State of \$500."

The factual situation which gives rise to your questions, as I understand it, is as follows: A securities company proposes to offer for sale in Alabama some 400 interests in a hotel condominium, which interests are coupled with a mandatory agency agreement for the management of the hotel. The purchasers of these interests will receive a deed covering the real property element of the interests. The securities firm contends that these interests will be marketed as investment interests and not as the sale of vacation homes or residences.

It appears to be conceded that the offering in question involves the offer to sell a security. Furthermore, there appears to be little room for contention that an interest in real estate is also offered. Reading the requirements of both the Real Estate License Law, and the Securities Act, in pari materia, it is the opinion of this office that the answer to your first question should be affirmative, that both licenses under the Real Estate License Law, and the Securities Act are required.

Without commenting upon the applicability vel non, of § 40-12-150, to the transaction above described, it does not appear that § 40-12-150 provides an exemption from the provisions of the Real Estate License Law. However, § 34-27-10, includes an exemption for a licensee under the Real Estate License Law from the provisions of § 40-12-150. Accordingly the answer to your second question is no.

Considering now your third question, it is clear that both the Securities Act, and the Real Estate License Law, are intended to insure the public that those persons acting as brokers, for securities and real estate, are knowledgeable and accountable in their activities and representations respecting transactions in securities and real estate respectively. Accordingly, it is the opinion of this office that a person possessing a securities license may cooperate with a person possessing a real estate broker's license in handling the transactions in question, each receiving a commission, as allowed under the respective licensing statutes, and as agreed between the licensees in question, the owner, and the

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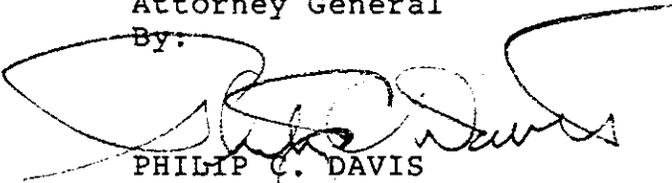
purchaser, thus, the answer to your third question, is that the responsibility for the transaction in question may be divided between separate licensees under the Securities Act and the Real Estate License Law.

I trust that the foregoing answers your questions. If this office can be of further assistance to you, please do not hesitate to get in touch with us.

Yours very truly,

CHARLES A. GRADDICK
Attorney General

By:



PHILIP C. DAVIS
Assistant Attorney General

CAG/PCD/pm