

ALAN WILSON
ATTORNEY GENERAL

October 8, 2021

The Honorable J. Gary Simrill, Member
South Carolina House of Representatives
518C Blatt Building
Columbia, SC 29201

Dear Representative Simrill:

We received correspondence from you indicating your desire for an opinion of this Office on whether a company must engage a real estate agent in order to sell real estate owned by the company? Included with your request is an opinion letter written by a private attorney to Mark Dillard, the Executive Director of the South Carolina Manufactured Housing Institute, which concludes a real estate agent is not required for such a transaction when the company is the owner of the real estate. Based on our analysis below, we agree with this attorney's opinion.

Law/Analysis

The letter to Mark Dillard looks to chapter 57 of title 40 of the South Carolina Code (2011 & Supp. 2020), which governs real estate professionals including real estate brokers, salespersons, and property managers. Section 40-57-5 of the South Carolina Code (Supp. 2020) explains: "Unless otherwise provided in this chapter, the provisions of Article 1, Chapter 1 apply to real estate brokers, salespersons, and property managers." Section 40-57-20 of the South Carolina Code (Supp. 2020) requires such professionals to hold a license. Section 40-57-30(3) of the South Carolina Code (Supp. 2020) defines a "broker" as

an associated licensee who has met the experience and education requirements and has passed the examination for a broker license and who, for a fee, salary, commission, referral fee, or other valuable consideration, or who, with the intent or expectation of receiving compensation:

(a) negotiates or attempts to negotiate the listing, sale, purchase, exchange, lease, or other disposition of real estate or the improvements to the real estate;

(b) auctions or offers to auction real estate in accordance with Section 40-6-250;

- (c) for a fee or valuable consideration solicits a referral;
- (d) offers services as a real estate consultant, counselor, or transaction manager;
- (e) offers to act as a subagent of a real estate brokerage firm representing a client in a real estate transaction; or
- (f) advertises or otherwise represents to the public as being engaged in any of the foregoing activities.

Section 40-57-30(15) of the South Carolina Code (Supp. 2020) defines “salesperson” as “an associated licensee who: (a) meets experience and education requirements; (b) passes an examination for a salesperson license; and (c) engages in or participates in an activity enumerated in item (3) for a fee, salary, commission, or other valuable consideration, or with the intent or expectation of receiving compensation.” Lastly, section 40-57-30(20) of the South Carolina Code (Supp. 2020) states a “property manager” is

an associated licensee who meets educational requirements and passes the examination for a property manager license, and who will for a fee, salary, commission, other valuable consideration or with the intent or expectation of receiving compensation:

- (a) negotiates or attempts to negotiate the rental or leasing of real estate or improvements to the real estate;
- (b) lists or offers to list and provide a service in connection with the leasing or rental of real estate or improvements to the real estate; or
- (c) advertises or otherwise represents to the public as being engaged in an activity in subitems (a) and (b).

A property owner who acts to sell his or her property may very well engage in some of the activities described in the above definitions, including negotiating the sale of his or her own property. Moreover, while we are not privy to the facts underlying this request letter, we can imagine that employees of a company who are authorized to sell property owned by the company may in fact receive a salary or other compensation for performing such duties. However, as mentioned in the letter to Mark Dillard, section 40-57-240 of the South Carolina Code (Supp. 2020) states the provisions in chapter 57 of title 40 do not apply to “the sale, lease, or rental of real estate by an unlicensed owner of real estate who owns any interest in the real estate if the interest being sold, leased, or rented is identical to the owner’s legal interest. . . .” Therefore, any individual selling his or her property is not required to comply with the regulations governing real estate

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professionals contained in chapter 57 of title 40 if he or she is selling an interest in real estate identical to the interest he or she owns. Furthermore, we do not believe employees of an entity would similarly be required to comply with these regulations when selling an interest in real property identical to that owned by their employer.

While our Supreme Court made clear in State v. Buyers Service Co., Inc., 292 S.C. 426, 357 S.E.2d 15 (1987), the services of an attorney are required in a real estate transaction as the preparation of documents affecting title to real property necessitate the practice of law, we find no similar requirement under the law for the services of a real estate agent. As such, we agree a real estate agent is not required when an entity sells real property it owns.

Conclusion

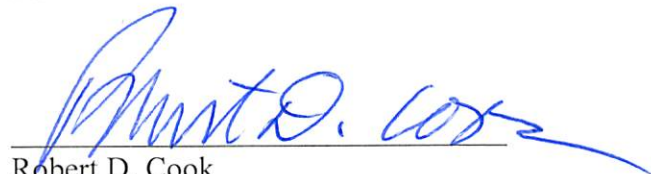
Chapter 57 of title 40 governs the regulation of real estate professionals in this state and requires such professions obtain a license when engaging in the negotiation or sale of real estate among other activities. However, section 40-57-240 of the South Carolina Code describes persons, agencies, and instrumentalities that are specifically not subject to these provisions including “the sale, lease, or rental of real estate by an unlicensed owner of real estate who owns any interest in the real estate if the interest being sold, leased, or rented is identical to the owner’s legal interest.” Therefore, it is our opinion an entity that owns an interest in real estate is not required to comply with the provisions contained in chapter 57 of title 40 when selling an interest identical to the interest it owns. Furthermore, we do not find any other requirement under South Carolina law mandating the services of a real estate agent in such a transaction. Therefore, we do not believe a real estate agent is required in order for an entity to sell its own property.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General