

1972 S.C. Op. Atty. Gen. 49 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3258, 1972 WL 20405

Office of the Attorney General

State of South Carolina

Opinion No. 3258

February 1, 1972

*1 Honorable R. H. Baer, Jr.
Commissioner
South Carolina Real Estate Board
P. O. Box ??
502 Columbia Building
Columbia, South Carolina 29211

Dear Mr. Bear:

You have requested that this office render an opinion as to whether one, who is not a United States citizen, is eligible for a real estate license.

Section 56–1545.8 of the 1962 Code of Laws of South Carolina, as amended, states. ‘Licenses as real estate broker, counselor, real estate salesman, appraiser, or property manager shall be granted only to persons, residents of this state, . . . (emphasis added). It is an established principle of statutory construction that words of a statute are to be construed in their plain meaning whenever possible, and nothing can be added or materially altered therein by an administrative agency. The question thus evolves into one of whether a resident of this state is synonymous with United States citizenship, or whether a resident of this state is required to be a United States citizen prior to attaining licensing by the South Carolina Real Estate Board.

Section 56–1545.8 of the 1962 Code of Laws of South Carolina, as amended, sets forth the necessary requisites for licensing by the Board and includes therein, . . . shall be granted only to persons, residents of this state, . . .

In the Law of Statutory Construction it is established that words contained therein are to be taken at their plain meaning, ‘[Hatchett v. Nationwide Mutual Insurance Company](#), 244 S.C. 425, 137 S.E.2d 608, if such construction is possible. The ‘plain meaning’ of the above-referenced statute is that licensees be residents of this state, to require that they be also citizens of the United States is beyond the bounds of the law. This state has judicially held that ‘residence’ and ‘citizenship’ are entirely different things, [Cummings v. Wingo](#), 31 S.C. 427, 10 S.E. 107, and cases from other jurisdictions have held that a non-United States citizen may be considered a resident of a state within the United States. [Greiner v. Bank of Adelaide](#), 26 N.Y.S.2d 515, 516, 176 Misc. 315.

It is, therefore, the opinion of this office that one not a United States citizen may qualify for licensing by the South Carolina Real Estate Board if the applicant is a resident of this state.

Residency has been defined as the equivalent of ‘domicile’ meaning the place where a person has his true, fixed, and permanent home and principal establishment, to which he has whenever he is absent an intention of returning. [Phillips v. S. C. Tax Commission](#), 195 S.C. 472, 12 S.E.2d 13. One of the essential elements to constitute a particular place as one’s residence is an intention to remain permanently or for an indefinite time in such place. [Barfield v. Coker and Company](#), 73 S.E. 181, 53 S.E. 170.

Reviewing the above definitions of ‘residency,’ it is apparent that one may be a resident without being a citizen of the United States. Residency is a question of fact, being that of intention to remain, therefore foreign citizenship would be one factor to consider in determining if the requisite intention is present. In the case which you presented, the burden of showing residency would be on the applicant. If such residency is shown, the fact that the applicant is not a United States citizen would have no bearing on the licensing.

*2 I trust that this has been sufficient to answer the question you posed. If we may be of any further assistance, please do not hesitate to call.

Very truly yours,

Timothy G. Quinn
Assistant Attorney General

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