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Client Alert

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Real Estate Licensing and Registration Act: Licensees Can Now Form Qualified Associations

The recent amendments to the Real Estate Licensing and Registration Act (RELRA) took effect on September 4, 2009. These changes allow real estate licensees to create "Qualified Associations." This client alert will describe what a "Qualified Association" is, what the formation requirements are, and how it may be of benefit to real estate licensees.

I. What is a "Qualified Association"?

For purposes of RELRA, a Qualified Association includes a corporation, limited liability partnership, limited partnership or limited liability company (collectively referred to as the "Entity"). The Entity must be organized, though the particular state of organization is not material. The Entity itself cannot hold a real estate license or hold itself out as providing any real estate services or real estate related services. Finally, the Entity must be owned solely by licensees who all must be affiliated with the same broker. If these requirements are met, the licensees may form a Qualified Association.

When creating a Qualified Association, special attention must be given to the reporting requirements of the Act. The Association must report its existence to the State Real Estate Commission within 30 days of formation, along with the name of the Entity, owners, and jurisdiction under which the Entity was formed, as well as the date it was filed for registration with the state. Additionally, the agreement must have in place provisions for the withdrawal or death of an owner. Penalties may be assessed if a non-licensee is an owner, or if an owner licensee is affiliated with a broker different from the remainder of the licensee owners.

II. Benefits of a Qualified Association

The Qualified Association allows a real estate agency to operate more like a traditional business. Brokers may, if they choose to recognize the Qualified Association, pay commissions to the entity rather than the individual licensees. The Qualified Association can also hire, fire, and pay employees. Allowing the affiliated licensees to operate under an entity can provide tax and liability advantages such as maintaining pass through income while limiting liability to your investment in the company, but may also lead to separate issues, e.g., worker's compensation, social security, and Medicare.

In total, these amendments may be very beneficial to affiliated licensees, though it remains to be seen what regulations may follow regarding these recent changes. For legal assistance involving Qualified Associations, please contact the author of this article, any member of the Real Estate Practice Group, or any MacDonald Illig attorney with whom you have worked.

For more information: