

831.

BOND—FOR REAL ESTATE BROKER IS SINGLE BOND—SECTION 6373-35,  
GENERAL CODE, CONSTRUED.

## SYLLABUS:

1. *The bond required to be given by each real estate broker, under the provisions of Section 6373-35 of the General Code, is a single bond in the sum of \$1,000.00, whether the license be issued to a person, firm or corporation as a broker, and no additional bond of individual members of firms or officers of corporations is necessary.*

2. *The application of a corporation for a broker's license need not name any of its officers other than the president of such corporation and officers not named therein may make application for licenses as real estate salesmen.*

3. *The fees for the issuance of brokers' and dealers' licenses, provided by Section 6373-39 of the General Code, are not payable until such licenses are issued and unsuccessful applicants are entitled to the return of the fees accompanying their applications.*

COLUMBUS, OHIO, August 5, 1927.

HON. CYRUS LOCHER, *Director, Department of Commerce, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your recent letter as follows:

“Section 6373-26 provides:

‘No person, firm or corporation shall act as a real estate broker or as a real estate salesman, or advertise or assume to act as such, without first being licensed so to do as provided in this act.’

Section 6373-35 provides:

‘No real estate broker's license shall be issued until the grantee thereof shall have executed and filed a bond to the state of Ohio in the sum of \$1,000 \* \* \* .’

Section 6373-29 provides:

‘ \* \* \* If applicant is a firm, the names of all the members thereof must also be stated, and if it is a corporation, those of its president and each of its officers to whom the license is to apply \* \* \* .’

Section 6373-31 provides:

‘If the applicant passes the examination, a real estate broker's license shall be issued to him as hereinafter prescribed. If all the members of a firm applicant pass the examination, a license shall be issued to such firm; if one or more members pass, and the others fail, he or they who pass shall be entitled to an individual or firm license in his or their name upon the filing of a new application in the manner provided herein, and the payment of the proper fee, without further examination. \* \* \* .’

‘If all the officers named in the application of a corporation pass the examination, a license shall be issued to such corporation; if any officer so named passes, and all or any of the other named officers fail, the corporation shall be entitled to the license applied for, and the officers who fail shall be entitled to become applicants for real estate salesmen's licenses.’

Section 6373-39 provides for broker's license fees:

' \* \* \* If the licensee be a corporation, an additional fee of \$2.00 for each officer other than the president thereof, and if it be a firm, an additional fee of \$2.00 for the second and each additional member thereof. \* \* \* '

In order to clear up some of the questions that are arising, the Board desires an opinion from your department—

1. The ABC corporation makes application for a broker's license. All the officers of the corporation make application and pass the examination. A license is issued to the corporation, naming and including all the officers named in the application of the corporation. The corporation gives a bond as provided for in Section 6373-35.

QUESTION—Must each officer give additional bond or does the corporation's bond cover all the officers?

2. Section 6373-31 provides: ' \* \* \* If any officer so named passes, and all or any of the other named officers fail, the corporation shall be entitled to the license applied for, and the officers who fail shall be entitled to become applicants for real estate salesman's licenses.'

QUESTION—Will it be necessary for all the officers to first be named by the corporation and make application for a broker's license before they can legally make application for a salesman's license, or may they make application for a salesman's license in the first instance?

3. The XYZ firm, a partnership, makes application for a broker's license. The three partners, X, Y and Z, are designated as members of the firm and make application for broker's licenses. All pass the examination. The XYZ partnership gives a bond.

QUESTION—Will X, Y and Z, as partners, be required to give further bond for themselves, or does one bond given by the firm cover the three partners?

4. Section 6373-39 provides for broker's and salesman's license fees, and provides that in all cases the fee shall accompany the application for license.

'A' makes application for a broker's license, accompanies his application with the proper fee. He fails to pass the examination and his application is rejected.

QUESTION—Is 'A' entitled to have his fee returned to him or is the same to be paid into the State Treasury?"

A careful reading of the statutes involved is sufficient to answer the questions which you raise. You first ask whether the bond of a corporation as a real estate broker is sufficient to include all of the officers or whether each officer must give an additional bond. Section 6373-35 provides as follows:

"No real estate broker's license shall be issued until the grantee thereof shall have executed and filed a bond to the State of Ohio in the sum of \$1,000 and with such surety as the real estate examiners may require. Such bonds shall be filed with the state board of real estate examiners and kept by them in their offices. Such bond shall be conditioned upon the faithful observance of all the provisions of this act and shall also indemnify any person who may be damaged by a failure on the part of the applicant for a real es-

tate broker's license to conduct his business in accordance with the requirements of this act. (G. C. Sections 6373-25 to 6373-51.) Any person claiming to have been damaged by any misrepresentation or fraud on the part of a real estate broker or by reason of the violation of the terms of this act, may maintain an action at law against the broker making such representations or perpetrating such fraud or violating the provisions of this act, and may join as parties defendant the sureties on the bonds herein provided for. Such bonds shall be in the form prescribed by the board of real estate examiners and approved by them."

This is the only section applicable to bonds and it is to be noted that no bond is required of real estate salesmen, although they must obtain separate licenses as such salesmen in the event they are not covered by the broker's license. The distinction between the two is made evident by the provisions of Section 6373-25, where the two are defined as follows:

" 'Real estate broker' means a person, firm or corporation who, for a commission, compensation or valuable consideration, sells, or offers for sale, buys, or offers to buy, negotiates the purchase or sale or exchange of real estate, or leases, or offers to lease, rents, or offers for rent, any real estate, interest therein, or improvement thereon, for others.

'Real estate salesman' means a person, who for a commission, compensation or valuable consideration, is employed by a licensed broker, to sell or offer for sale, or to buy, or to offer to buy, or to lease, or to offer to lease, rent, or offer for rent, any real estate, interest therein or improvement thereon."

You will observe that a broker may be either a person, firm or corporation and it is quite obvious that the bond required by Section 6373-35 of the General Code is a single bond for each broker's license, whether the broker be a person, firm or corporation. In the question which you propound, while the individual officers of the corporation passed the examination, the license issued is a single broker's license to the corporation and the bond, executed in the name of the corporation, is sufficient to cover all of the officers named in the license as having passed the examination.

Your second question asks whether it be necessary that all officers of a corporate applicant be named in the application for a broker's license before such officers can legally make application for a salesman's license. I call your attention to the provisions of the last sentence in Section 6373-29 of the General Code, which is as follows:

"If applicant is a firm, the names of all the members thereof must also be stated, and if it is a corporation, those of its president and of each of its officers to whom the license is to apply, and the certificate and recommendation herein required shall be made and given with respect to all persons whose names are so shown."

I think it clear from this language that the only officer whose name must be included in the application is the president and only such other officers as the corporation sees fit to include need be named in the application for a broker's license. It follows, therefore, that other officers than the president may in the first instance make application for salesmen's licenses to be in the employ of the corporation as brokers and it is not necessary that such other officers be named in the application for a broker's license.

Your third question is answered in my discussion of the first question. The broker's bond provided by Section 6373-35 of the General Code being obviously to cover the broker's license and a broker being defined in Section 6373-25, as including any person, firm or corporation, the bond given by the partnership will meet the requirements of law and individual bonds of the partners are unnecessary.

Your fourth question is as to the right of an applicant who fails to pass the examination for a broker's license to a return of the fee accompanying his application. Section 6373-39 of the General Code reads as follows:

"The fees for licenses shall be as follows:

1. For a real estate broker's license, \$10.00 for the first year and \$5.00 for each renewal thereof. If the licensee be a corporation, an additional fee of \$2.00 for each officer other than the president thereof, and if it be a firm, an additional fee of \$2.00 for the second and each additional member thereof. A charge of \$1.00 shall be made for duplicate real estate broker's licenses.
2. For a real estate salesman's license, \$2.00 for the first year and \$1.00 for each renewal thereof.

In all cases the fee shall accompany the application for license or renewal. If an applicant or other person admitted to an examination for a real estate broker's license fails to pass the examination to which he is admitted, he shall be entitled to be admitted to further examinations."

It is quite obvious that the fees prescribed are for licenses issued. This is the clear import of the language used in the above quoted section. While there is no specific reference to a return of the fee accompanying the application, there is no authority for its retention in the event that a license is not issued. In my view the requirement that the fee accompany the application is merely a provision for safeguarding the payment in the event of the success of the applicant in passing the examination and the consequent issuance of a license. Such fee does not become payable into the state treasury until the license is issued and in the event of the failure of the applicant, it is my opinion that it is your duty to return the amount of the deposit to the unsuccessful applicant.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

832.

INSURANCE—INSURANCE ASSOCIATION EXEMPT FROM PAYMENT OF FRANCHISE TAX PROVIDED FOR IN SENATE BILL NO. 22, 87TH GENERAL ASSEMBLY.

*SYLLABUS:*

*Under the provisions of Section 10 of Amended Substitute Senate Bill, No. 22, the Attorney in Fact of a reciprocal or inter-insurance association, being required by law to file an annual report with the superintendent of insurance and pay the tax required under Section 9556-7, is not subject to the provisions of said Amended*