



2009 RELRA Amendments: Qualified Associations **Frequently Asked Questions**

Act 14 of 2009 (signed July 6, 2009), implements two substantial changes to the Real Estate Licensing and Registration Act (RELRA). The first change – discussed in this document – allows brokers to pay to, and licensees to receive commissions from, a “qualified association.” The second change – discussed in a separate document – makes some changes to the escrow rules that apply to real estate licensees.

Q: What is the primary effect of these changes?

A: Before the passage of Act 14 of 2009, the law prohibited brokers from paying “a commission or any valuable consideration...to anyone other than his licensed employees....” Commission checks could only be written to individual licensees; brokers could not pay commissions to a corporate entity owned by a licensee. This change allows licensees to establish certain types of corporate entities (called “qualified associations”), and permits brokers to pay commissions to those entities.

Q: Should I create a qualified association?

A: There are many issues to be addressed before deciding if a qualified association is the right approach for your business. PAR cannot provide financial and tax advice on whether this is a good option for you. *PAR strongly recommends that you obtain advice from tax, financial and/or legal experts before establishing a qualified association.*

Q: What is the effective date of the changes?

A: These changes go into effect on September 4, 2009. After this date, licensees who are members of qualified associations may receive compensation through that qualified association.

Q: What do I have to do to comply with these changes?

A: Nothing. The amendments *allow* licensees to create qualified associations, but don’t require them to do so. If you want to continue to be paid as an individual there is nothing you need to do.

Q: What sorts of business entities can be a “Qualified Association”?

A: A qualified association is any corporation, limited liability partnership (LLP), limited partnership (LP) or limited liability company (LLC).

Q: Why is it limited to these types of entities? What about general partnerships?

A: It is necessary to have some official tracking mechanisms to ensure compliance with the statute. All of the listed entities are on record with the [Corporation Bureau of the Department of State](#); general partnerships do not file with the state, so they were not included. If there is a question of whether a particular business entity is properly registered, a broker (or the Commission) can obtain that information from the Corporation Bureau.

Q: Will my qualified association be licensed by the State Real Estate Commission?

A: No. The amendments specifically state that a qualified association is not a licensed entity. The corporate entity (corporation, LLC, LP or LLP) must be filed with the Corporation Bureau. Once the entity exists, it must be reported to the State Real Estate Commission as a qualified association.

Q: What information about the qualified association do I have to report to the State Real Estate Commission?

A: Within 30 days of forming or joining a qualified association, a licensee must report to the Commission the name of the entity, the names of the owners, the jurisdiction in which the entity is registered, and the date on which it was registered. Licensees must also report any changes in ownership of the qualified association. The commission will issue an “association number” (not a license number) to all entities that properly comply with the rules to be considered a qualified association.

Q: Is there a reporting form available?

A: Yes. The reporting form can be found [on the Commission’s Web site](#).

Q: Who can create and own a qualified association?

A: A qualified association must be owned solely by licensees who are all affiliated with the same broker. Although a *brokerage* may be owned by a non-licensee, a qualified association may **ONLY** be owned by one or more licensees, all of whom must be affiliated with the same firm. For example, a qualified association could not be owned by a licensed husband and an unlicensed wife. A qualified association could not be owned by one licensee affiliated with Broker X and a second licensee affiliated with Broker Y.

Q: Can a broker create and own a qualified association?

A: No. The law allows “an associate broker or salesperson” to receive fees from a qualified association, but does not address brokers. Based on this language, a broker could not own a qualified association and receive fees from it. That said, a broker certainly has the authority to own and operate her brokerage operations through various corporate entities – but the entities will not be considered to be qualified associations under this provision of the law.

Q: Can a single licensee establish a qualified association?

A: Yes. A qualified association may be owned by a single licensee or it may be owned by multiple licensees affiliated with the same broker. ***PAR strongly recommends that you obtain advice from tax, financial and/or legal experts before establishing a qualified association.***

Q: Can a team establish a qualified association?

A: Yes, but with two qualifications. First, the entity can only be owned by licensees; any non-licensed staff that works with the team cannot be an owner. Second, all licensees must be affiliated with the same broker. Any time there are multiple owners of the entity there should be provisions in place to address what happens if one owner moves to a different broker or gives up his/her license.

Q: Are there any requirements for minimum ownership interest in a qualified association, or that the ownership interests are proportional to the expected business of the multiple owners?

A: No. The ownership structure of the underlying business entity is set up is a question left entirely to the owners, as long as the entity is owned only by licensees affiliated with the same firm. For example an entity could be established in which the lead licensee of a team owns 80% of the entity and his 4 licensed team members each own 5%, or it could be established with each of the five licensees owning 20% of the entity. Ownership structure and distribution of income and costs are left to the owners of the entity to determine. ***Because ownership structure could affect legal and tax liabilities, PAR strongly recommends that you obtain advice from tax, financial and/or legal experts before establishing a qualified association.***

Q: Can a licensee be an owner of more than one qualified association?

A: There does not appear to be a restriction that would prohibit licensees from owning all or part of multiple qualified associations. For example, a licensee usually works as an individual but occasionally partners with another licensee in the same firm could establish one qualified association owned solely by that licensee and another co-owned with the occasional partner. Aside from obtaining relevant legal and/or financial guidance about whether such an approach is advisable, this should be discussed in advance with the licensee's broker.

Q: What if a co-owner of a qualified association leaves a brokerage?

A: These amendments make it a violation of RELRA to own an interest in a qualified association that is not solely owned by licensees who are all affiliated with the same broker. The governance documents for any co-owned entity should establish procedures to sever ownership rights of any owner who leaves a brokerage and to settle any contribution or distribution issues that may arise. ***PAR strongly recommends that you obtain advice from tax, financial and/or legal experts before establishing a qualified association.***

Q: What if the owner of a qualified association dies?

A: Ownership may continue through a licensee's estate for up to 18 months after the licensee's death.

Q: Are there any requirements regarding the name of the qualified association?

A: There are no specific requirements about the name of the qualified association, but the law does state that it cannot "hold itself out to the public as providing real estate services or real estate-related services." As a risk reduction matter it may be safer to select a name that is not easily misunderstood as a real estate company. For example, it may be wise to avoid using "Realty" or "Real Estate" in the name to avoid the chance that it might be viewed by a consumer as providing real estate services.

Q: Can I advertise in the name of a qualified association?

A: **NO!!!** The law explicitly states that a qualified association cannot "hold itself out to the public as providing real estate services or real estate-related services." A qualified association should be invisible to consumers.

Q: What happens if I violate the law?

A: All these changes were incorporated into RELRA, so any violations are a violation of RELRA and would be enforced by the State Real Estate Commission. Remember that doing business through a corporate entity will impose additional corporate rules that are outside the scope of the Commission (i.e., different state and federal tax rules; filing requirements; etc.). Any failure to comply with these requirements will be enforced by the appropriate governmental body.

Q: Does a broker have to allow qualified associations?

A: **No.** Generally speaking, brokers have a great deal of authority in establishing the overall business policies of their brokerages. The amendments state that "it is not unlawful for a broker to pay a ... qualified association," but the language does not state that brokers are required to allow them as a brokerage policy. If a broker decides that she wants to continue paying only to individuals and does not wish to pay out to qualified associations, the broker could make a brokerage policy to that effect.

Or, to put it another way, licensees have the *ability* to form a qualified association, but don't have the *right* to do so unless their broker permits it. Before creating a qualified association you should check with your broker to ensure that she will agree to pay you as a qualified association. Brokers will want to consider under what circumstances, if any, they will allow licensees to form qualified associations, and under what circumstances, if any, they will prohibit them.

Q: Brokers supervise licensees. Who supervises a qualified association?

A: The broker has supervisory responsibility for all affiliated licensees and all licensed activity within the brokerage. Regardless of the relationship between individual licensees, the broker will still have the ultimate responsibility for oversight of licensed activity, so it is possible that the broker could be found in violation if there is something about a qualified association that violates RELRA (e.g., a qualified association is advertising to the public as providing real estate services). That said, responsibility for the business side of the entity (e.g., compliance with tax law and corporate law) should rest primarily with the owner(s) of the qualified association since it is not licensed activity.

Q: How do brokers know if a specific qualified association is compliant with RELRA and relevant corporate laws?

A: Brokers are advised to establish internal policies to verify that a qualified association was properly created and that it continues to comply with the law. Brokers can check the registration date, current status and type of entity on the [Corporation Bureau's Web site](#). Information on qualified associations will not be made available through the online PALS system that can be used to verify license information, but brokers should also be able to verify with the Commission via phone if the qualified association has been properly reported by supplying the association number that will be issued to each qualified association.

Q: Can a qualified association have employees?

A: Yes, but a qualified association can only employ and pay unlicensed employees – not licensed salespeople or associate brokers (see question below for more on this difference). If a qualified association does decide to hire employees, all relevant employment rules (workers' compensation, tax withholding, wage and hour rules, etc.) will apply. ***PAR strongly recommends that you obtain advice from tax, financial and/or legal experts before hiring any employees, and that you check with your broker about any brokerage policies on this issue.***

Q: Why can't a qualified association employ licensed salespeople?

A: There are two reasons for this limitation. First, the law requires that every salesperson and associate broker must be "employed" and supervised by a broker. Nothing in these amendments changed that requirement, so a licensee could not be subject to the employment and supervision of both the broker and also a qualified association which, by definition, does not provide real estate services to clients. Second, while these amendments do allow for qualified associations to pay individual agents for providing real estate services, a licensee may only receive those fees "from a qualified association in which the associate broker or salesperson owns an interest." So unless a licensee owns a portion of the qualified association, that licensee cannot receive any fees from the association.