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'Turf Law' Held Unconstitutional

Recently, a federal court in the western district of Kentucky held that Kentucky regulations that prohibit out-of-state real estate brokers from assisting licensed Kentucky brokers with Kentucky real property transactions are unconstitutional, *River Oaks Management, LLC v. Brown*, 2007 WL 2571909 (WD KY 2007). These regulations, commonly referred to as 'turf laws,' prevent out-of-state real estate brokers from being actively involved with any aspect of a real property transaction, other than merely referring the matter to the local broker. Similar turf laws often prevent out-of-state brokers from showing properties or, in the case of Kentucky's invalidated law, making any contact at all with prospective buyers, sellers, landlords or tenants.

Penalties for violating a jurisdiction's turf laws range from disgorgement of commissions to civil and criminal fines. In addition to Kentucky, seven other states have turf laws: Missouri, Nebraska, New Hampshire, New Jersey, Oklahoma, Pennsylvania and Utah. The fines and the extent of the allowable contact between brokers vary between each jurisdiction.

Although turf laws exist in a small minority of jurisdictions, they often affect real estate deals in neighboring states that do not have turf laws. For example, the Supreme Court, Appellate Division, First Department of New York, held that New Jersey's turf law precludes a licensed New York real estate broker from maintaining a suit to collect a commission earned as a result of the broker's activity in New Jersey. *Interglobal Realty Corp. v. American Standard Inc.*, 174 A.D.2d 436, 571 N.Y.S.2d 20 (1st Dep't 1991).

River Oaks Management, LLC held that the Kentucky law severely disadvantaged local property owners because the prohibition against sharing information with out-of-state real estate brokers, according to the court, has the effect of preventing property owners from marketing properties on the national brokerage market and preventing national investors and tenants from being able to rely on the advice and counsel of their out-of-state traditional brokers with whom they may have an existing relationship, forcing them in many cases to deal only with a local stranger. As a result, the court concluded that Kentucky's turf law, "isolates the Kentucky real estate market from the nation and offends those principles

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underlying the Commerce Clause.” The court enjoined the Kentucky Real Estate Commission from enforcing its prohibitions against splitting fees with and permitting assistance by licensed out-of-state real estate brokers.

River Oaks Management, LLC is significant because it casts doubt on the legitimacy of similar regulations in the remaining turf states, and opens the market more fully to national and out-of-state brokers and investors, although still requiring the involvement of a local broker.

* * *

We will be monitoring the impact this case has on similar laws in New Jersey and Pennsylvania and other affected states where our clients are doing business. Should you have any questions or wish to discuss other aspects of these cases, please contact Alan Kleiman, Esq. at (212) 351-4520 or akleiman@ebglaw.com, or Marc D. Fitapelli, Esq. at (212) 351-3775 or mfitapelli@ebglaw.com, both in the firm’s New York office.

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