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Real Estate Brokers and Salespersons - When Is a Broker Not a Broker - Walter v. Moore

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REAL ESTATE BROKERS AND SALESPERSONS—When is a Broker Not a Broker? *Walter v. Moore,* 700 P.2d 1219 (Wyo. 1985).

In April 1981, Larry and Robin Moore, purchasers, and Dortha Walter, vendor, orally agreed upon the terms for the sale of Dortha's property.[1] To resolve specific financing details[2] with which Dortha was unfamiliar,[3] Dortha asked the Moores to telephone Dortha's daughter-in-law, Carol Walter, who was a licensed real estate salesperson.[4] The Moores did so.[5]

By telephone, Carol Walter[6] confirmed that she was a licensed real estate agent and advised the Moores on financing details.[7] Upon learning the Moores' plan to build a house on the property, Walter mentioned that she had recently sold a nearby parcel and that the owner had encountered difficulty in arranging financing because his land was within the 100-year flood plain. She explained, however, that the buyer had been able to build "above the floodplain."[8] Walter believed that county land use regulations[9] were being considered at the time of the sale.[10] In fact, the regulations had actually been adopted more than five years earlier.[11] In addition, Walter did not explain the possible effect that adoption of the regulations might have on the Moore's plan to build a house.[12]

Walter drafted a standard offer, acceptance, and receipt form,[13] which incorporated the orally agreed-upon terms, and sent it to Dortha, who gave it to the Moores. The Moores found some mistakes and contacted Walter again. She explained how to correct the mistakes, and the Moores made the changes. An attorney drafted the formal contract for deed.[14] Although

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1. Walter v. Moore, 700 P.2d 1219, 1221 (Wyo. 1985).
2. For example, monthly and balloon payments. *Walter,* 700 P.2d at 1230-31 (Rose, J., dissenting).
3. *Id.* at 1221.
4. As Justice Rose pointed out in the dissenting opinion, the parties and majority confuse several terms. *Id.* at 1229 n.2 (Rose, J., dissenting). Under the Real Estate Licensing Act, WYO. STAT. §§ 33-28-101 to -117 (1977), "real estate agent" is undefined. For this casenote's purposes, "real estate broker" and "real estate salesman" are used as defined by the Act in sections, §§ 33-28-101, -102(a), and -104. "Salesperson" will be used rather than "salesman" when possible. "Real estate agents" mean "brokers" and "salesmen" collectively. "Realtor," a copyrighted trade name, denotes a person who belongs to the National Association of Realtors and will not be used. WYOMING REAL ESTATE COMMISSION, REAL ESTATE MANUAL 268 (1980). In addition, "Act" refers to the Real Estate Licensing Act of 1971.
5. *Walter,* 700 P.2d at 1221.
6. Because Dortha Walter's role in this case was not at issue, Carol Walter will hereinafter be referred to as "Walter."
7. *Id.* at 1230 (Rose, J., dissenting).
8. *Id.* at 1231.
9. *Id.* at 1221-22. The regulations are not cited in the briefs or opinion. In effect, the regulations forbade both septic systems and residential structures within the 100-year flood plain. *Id.*
10. Brief for Appellee at 5, Walter v. Moore, 700 P.2d 1219 (Wyo. 1985).
11. The sale was completed on April 25, 1981. *Walter,* 700 P.2d at 1231 (Rose, J., dissenting). The regulations were adopted on March 4, 1976. *Id.* at 1232.
12. *Id.* at 1231-32.
13. Presumably, Walter filled out Form WAR 300-0179, which is found in WYOMING REAL ESTATE COMMISSION, REAL ESTATE MANUAL 309-11 (1980).
14. *Walter,* 700 P.2d at 1221.

they were concerned that the "mistakes" were actually an attempt to unilaterally alter the agreed-upon terms, the Moores believed that since Walter "was a real estate agent . . . she did not make [the] mistakes on purpose. . . ."[15]

Six months after buying the property, the Moores' septic system failed. The Moores applied to the county for a permit to install a new septic system. County authorities told the Moores that the regulations prohibited septic systems and residences within the 100-year flood plain.[16]

After informally attempting to rescind the contract, the Moores sued Dortha and Carol Walter.[17] The Moores sought recission of the contract with Dortha. They also sought damages from Carol, in her capacity as a licensed real estate agent, for fraudulent misrepresentation. The trial court, in summary judgment, rescinded the contract and proceeded to try the issue of Carol Walter's liability. The court found Walter to be liable as a licensed real estate agent, involved in the transaction, who held herself out as an experienced real estate agent for the purposes of the transaction.[18]

On appeal, the Wyoming Supreme Court, in a 3-2 decision, reversed. The court first held that Walter was not liable as a layman or as a general agent. The court then turned to the issue of whether Walter's activities constituted those of a real estate agent. When faced with this particular issue in the past, the court has been guided by the definitions found in the Wyoming Real Estate Licensing Act. Departing markedly from this practice, the *Walter* court developed a new definition and held that Carol Walter was neither "acting as a real estate agent in this transaction [nor] liable to the buyers on the basis of her minimal involvement as daughter-in-law of Dortha Walter."[19]

The effect of this decision is that Wyoming now has two competing definitions of a real estate broker. Because the court's reasoning is sometimes difficult to follow, both the criteria and the process it used to define a real estate agent are unclear. Only further litigation will fully clarify the implications of this decision.

This case note will contrast the court's new experiential definition with the traditional statutory definition. But before examining the court's decision in detail, it will be useful to review the Act and the court's prior application of it in similar situations.

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15. *Id.* at 1231 (Rose, J., dissenting) (quoting from the trial record).
16. *Id.* at 1221-22.
17. Bruce Walter, Carol's husband and Dortha's predecessor in interest in the property, was also named as a defendant. The trial court dismissed the complaint against Bruce in summary judgment proceedings. *Id.* at 1222.
18. *Id.*
19. *Id.* at 1227.

BACKGROUND

In 1921, Wyoming enacted its first legislation regulating real estate agents.[20] In 1929, the Wyoming Legislature repealed the 1921 Act and enacted a new version.[21] Forty-two years later, the Wyoming Legislature enacted the Real Estate Licensing Act of 1971,[22] repealing the 1929 Act. The Act's purpose was "to protect the public from evils which can arise from sales of real estate by unlicensed and unregulated persons."[23]

Wyoming's Act defines a real estate broker as "[a]ny person who, for another, . . . upon the promise of receiving a fee . . . agrees to do, directly or indirectly, any single act defined in . . . [§ 33-28-102(a)(ii)], whether as a part of a transaction or as the entire transaction shall [be deemed] a broker or a salesman within the meaning of this act. . . ."[24] Section 33-28-102(a)(ii) states that "[t]he term 'broker' shall mean any person who for another and for . . . valuable consideration . . . holds himself out as engaged in any of the [enumerated] activities."[25]

When faced with issues involving real estate agents, the court has consistently been guided by the Wyoming Legislature's policy decisions as embodied in the Act. The extent of the court's reliance on the Act is evident in two lines of cases: those involving status and those involving duty.

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20. 1921 Wyo. Sess. Laws ch. 31.

21. 1929 Sess. Laws ch. 197 (codified at WYO. STAT. §§ 33-344 to -355 (1957)).

22. 1971 Wyo. Sess. Laws ch. 251 (codified at WYO. STAT. §§ 33-28-101 to -117 (1977)). Note, however, that the Act has been substantially altered since 1977, WYO. STAT. §§ 33-28-101 to -206 (Supp. 1985).

23. Doran v. Imeson Aviation, Inc., 419 F. Supp. 586, 588 (D. Wyo. 1976). Further, agents, to be licenced, must "bear a good reputation for honesty, truthfulness[,] . . . fair dealing[, be] competent to transact the business of a real estate [agent],. . ." and pass an examination covering "business ethics, composition, arithmetic, elementary principles of land economics and appraisal, a general knowledge of the statutes of [Wyoming] relating to deeds, mortgages, contracts of sale, agency and brokerage, and the provisions of [the Act]." WYO. STAT. §§ 33-28-106(a), -107(a) (1977).

24. WYO. STAT. § 33-28-104 (1977). This section provides:
> Any person who, for another, with the intention or upon the promise of receiving a fee, does, offers, attempts or agrees to do, directly or indirectly, any single act defined in section 2(b) of this act [§ 33-28-102(a)(ii)], whether as a part of a transaction or as the entire transaction shall constitute such person a broker or salesman within the meaning of this act [§§ 33-28-101 to 33-28-117].

25. WYO. STAT. § 33-28-102(a)(ii) (1977). This section provides:
> The term "broker" shall mean any person who for another and for a fee, commission or other valuable consideration, or with the intent or expectation of receiving same, negotiates or attempts to negotiate the listing, sale, purchase, rental, auctioneering, exchange or lease of any real estate or the improvements thereon, or collects rents or attempts to collect rents, or who advertises or holds himself out as engaged in any of the foregoing activities. The term "broker" also includes any person employed by or on the behalf of the owner or owners of real estate to conduct the sale, leasing, or other disposition thereof at a salary or for a fee, commission or any other consideration. It also includes any person who engages in the business of charging an advance fee or contracting for the collection of a fee in connection with any contract whereby he undertakes primarily to promote the sale of real estate through its listing in a publication issued primarily for such purpose or for referral of information concerning such real estate to brokers or both.

In the first line of cases, the court has considered the question of whether a person is a broker and applied the applicable statutory definition. The seminal case on this subject is *Owens v. Capri.*[26] In that case, the putative real estate agent, Owens, was regularly employed as a cattle buyer. The only time Owens acted as a broker was when he assisted another in buying Capri's ranch. Owens' assistance resulted in a successful sale and he sued for a commission. Capri, the buyer and Owens' "principal," defended by claiming that Owens was not a licensed agent and thus could not maintain a suit for a commission since this was expressly denied by the Act. The Wyoming Supreme Court reversed the trial court's judgment for Owens. After reviewing the pertinent sections of the Act, the court determined that Owens' activities constituted those of a real estate broker; that Owens was unlicensed; and, for these reasons, he could not maintain an action for a commission under the Act.[27] Under the older common law definition of a broker, the court would have had to affirm. Yet, because the Act had supplanted the common law definition and Owens' activities fell within statutory definition, the court was required to follow the great weight of precedent and reverse.[28]

Sixteen years later, in *Dixon v. Ringsby,*[29] the court was again guided by the Act's definition. There, a ranch manager was found to be a broker under facts similar to those in *Owens.* The ranch manager was precluded from maintaining his action for a commission because he was an unlicensed broker.

The court has also relied upon the Act to determine who is a "subdivider,"[30] who is a "regular employee,"[31] and who is "incompetent."[32] Thus, when faced with questions of status that touched upon the Act's subject matter, the court has sought guidance in the Act's provisions.

In the second line of cases, the court has applied the Act to determine the standard of care that brokers must exercise when dealing with the public. In *Hagar v. Mobley,*[33] the lessee of a resort sought to sell his interest and misrepresented the lease's terms in the process. Although the broker and salesperson were involved in the sale and both had read the original lease, they did not notice the misrepresentation and subsequently repeated it to the buyers. A unanimous Wyoming Supreme Court found the real estate agents liable for negligence in their handling of the transaction and adopted section 33-28-111 of the Wyoming Statutes[34] as the standard which agents must satisfy. In other words, the agents had a duty to read the lease and verify the seller's information before passing it on to the buyers.

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26. 65 Wyo. 325, 202 P.2d 174 (1949).
27. *Id.* at 349, 202 P.2d at 184.
28. *Id.* at 334-35, 202 P.2d at 177.
29. 405 P.2d 271 (Wyo. 1965).
30. Battlefield, Inc., v. Neely, 656 P.2d 1154, 1157 (Wyo. 1983).
31. *Id.* at 1158-61; Dixon v. Ringsby, 405 P.2d at 275.
32. McCoy v. Thompson, 677 P.2d 839 (Wyo. 1984).
33. 638 P.2d 127 (Wyo. 1981).
34. Section 33-28-111 lists the activities that are grounds for revoking a real estate agent's license if engaged in by the agent.

A distinct rule emerges from these cases. To effectuate the purpose of the Act, the Wyoming Supreme Court has consistently consulted the Act when called upon to determine whether or not a given person is a broker.[35] Courts in other states have also consulted their respective statutes when faced with the same question.[36] Given this tradition and the clear legislative purpose of protecting the public, the court should have good reason to depart from the enacted standard.

THE PRINCIPAL CASE

The pertinent issue on appeal was whether Walter could be held liable for fraudulent misrepresentation.[37] The Wyoming Supreme Court considered three different theories under which Walter might have been liable. First, the court held that Walter could not be liable for fraud as a layman because she could not have knowingly and intentionally misrepresented facts of which she was unaware. She had simply failed to pass on facts that she could have discovered.[38] Next, the court concluded that Walter's activities did not constitute those of a general agent. The court ruled that even if Walter had been a general agent, she owed no duty to third persons.[39]

Turning to the third theory of liability, the court questioned Walter's status as a real estate agent.[40] Instead of applying the statutory definition of a broker as found in the Act, the *Walter* court devised its own ten-element test. Although the court did not enumerate its criteria, the following ten components may be gleaned from its discussion. Hence, a broker is one who

(1) is contacted by buyers in the broker's office;
(2) lists property;

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35. *See* Battlefield, Inc., v. Neely, 656 P.2d 1154, 1157-58 (Wyo. 1983); Dixon v. Ringsby, 405 P.2d 271, 275 (Wyo. 1965); Rosenberg v. Rosenblum, 72 Wyo. 91, 104, 261 P.2d 41, 45-46 (1953); Owens v. Capri, 65 Wyo. 325, 332-49, 202 P.2d 174, 176-83 (1949); Foley v. Hassey, 55 Wyo. 24, 32-33, 95 P.2d 85, 87-88, 90 (1939).

36. *See, e.g.*, Dillard v. Pan American Investments, Inc., 347 So.2d 990, 991 (Ala. 1977); Whitaker v. Arizona Real Estate Board, 26 Ariz. App. 347, 349, 548 P.2d 841, 843 (1976); Brakhage v. Georgetown Associates, Inc., 33 Colo. App. 385, 387-89, 523 P.2d 145, 146-47 (1974); Southern Cemetery Consultants, Inc. v. Peachtree Memorial Park, Inc., 218 Ga. 389, 392, 128 S.E.2d 200, 202 (1962); Thomas v. Jarvis, 213 Kan. 671, 673-76, 518 P.2d 532, 534-36 (1974); Certa v. Wittman, 35 Md. App. 364, 370 A.2d 573 (1977); Relocation Realty Services Corp. v. Carlson Companies, Inc., 264 N.W.2d 643, 645 (Minn. 1978); King v. Clifton, 648 S.W.2d 193, 197 (Mo. Ct. App. 1983); Union Interchange, Inc. v. Parker, 138 Mont. 348, 360-61, 357 P.2d 339, 345 (1960); Baron & Co., Inc. v. Bank of New Jersey, 504 F. Supp. 1199, 1204 (D.N.J. 1981); Nichols v. Sefcik, 66 N.M. 449, 452-53, 349 P.2d 678, 680-81 (1960); People v. Sickinger, 79 Misc. 2d 572, 360 N.Y.S.2d 796 (N.Y. Crim. Ct. 1974); State v. Rentex, Inc., 5 O.O.3d 173, 51 Ohio App. 2d 57, 365 N.E.2d 1274 (1977); Kusche v. Vulcanized Rubber & Plastics Co., 416 Pa. 364, 366-68, 206 A.2d 40, 41-42 (1965); Canada v. Kearns, 624 S.W.2d 755, 756 (Tex. Ct. App. 1981); Diversified General Corp. v. White Barn Golf Course, Inc., 584 P.2d 848, 852 (Utah 1978); In re McGrath, 138 Vt. 77, 79-82, 411 A.2d 1362, 1364-65 (1980); Wachob v. Briner, 35 Wash. 2d 309, 310-11, 212 P.2d 781, 782-83 (1949); George Nangen & Co. v. Kenosha Auto Transport Corp., 238 F. Supp. 157, 159 (E.D. Wis. 1965).

37. *Walter*, 700 P.2d at 1221.

38. *Id.* at 1222-23.

39. *Id.* at 1223-24.

40. *Id.* at 1224.

(3) obtains financial information about buyers' abilities to qualify for loans;
(4) matches buyers' desires with their abilities;
(5) shows listed properties to prospective buyers;
(6) spends "weeks or months" intimately discussing potential purchases;
(7) negotiates terms between buyers and sellers;
(8) accepts and conveys offers;
(9) generally informs and advises buyers in their desires and attempts to buy property; and
(10) accepts a commission for doing the above.[41]

The court then applied this definition and concluded that

> [Walter] never met the buyers, the Moores. She did not obtain loan information, show houses to them, convey offers to purchase, negotiate the sale price or terms of sale, or develop a close relationship with the Moores. She did not list the property or show it or sell it, nor was she paid a commission. . . . The judge's finding that she "was involved in, and held herself out as an experienced real estate agent for the purposes of this transaction" cannot be upheld as a basis for holding Carol liable.[42]

ANALYSIS

The Experiential Definition

The issue before the court in *Walter* was not a new one.[43] As noted above, the court had handed down several decisions on the same subject. This time, however, the *Walter* court chose to forge new law rather than follow its past decisions. In so doing, the court developed a new definition of a real estate broker that seems haphazard and appears to be based largely on the court's collective experience. Moreover, the court does not adequately explain the process by which it applied the definition to the facts. After first examining some problems in the court's reasoning, an evaluation of the statutory definition will demonstrate its simplicity and uniformity.

The first problem with the court's new approach is that the court fails to clearly specify the elements of its new definition. Although the various

41. *See id.* at 1224-25.
42. *Id.* at 1225.
43. Although the issue itself was not new, the subject matter in which it arose was. The court applied its traditional approach in cases that involved brokers suing for commissions. *Walter*, however, involved fraudulent misrepresentation, a tort action. Nonetheless, this justification for the court's departure from its traditional approach is not supported by the court's application of the Act in tort actions. First of all, the court has applied the Act in tort actions brought by buyers against brokers. The *Hagar* court expressly applied the Act in a buyer's action that alleged broker misrepresentation. 638 P.2d at 137. Secondly, the *Walter* court invoked the Act to support its reasoning. Consequently, the court has shown no reluctance to apply the Act in a buyer's action in tort against a broker. Although the *Walter* court's adoption of its new definition might be justified by the subject matter of the suit, the court's citations belie this rationale.

criteria are part of a two-page discussion,[44] the enumerated elements set out above are only evident upon a careful reading of the court's analysis.

The second problem is that the court failed to clearly specify the source of its new definition. The court buttressed its analysis by citing the Act[45] but did not apply it. As a result, only three of the court's ten elements[46] can be found in the Act. The court noted seven additional elements for which it cited no authority. Presumably the remaining seven elements are rooted in the majority's collective experience. Moreover, the court failed to explain why it adopted a new definition rather than applying its traditional approach.

The third and most critical problem is that the majority failed to explain the process by which it applied its new definition. The majority did not explain what weight, if any, each element is to carry; nor did the majority indicate how many of the elements must be satisfied to impose liability. In all, the majority's definition is complicated and unpredictable in its present form.

The Statutory Alternative

The majority's experiential definition is not only confusing, but also unnecessary. In effect, the majority in *Walter* set out stalking a new definition, armed not with the principle of *stare decisis,* but with their collective experience and powers of reason. What is perhaps most disappointing about this expedition is the lack of any need for it. The statutory definition, as will be shown below, is sufficiently flexible to allow the result the court evidently wished to reach. Moreover, by using the statutory definition, the court could have avoided the problems that plague its new approach.

Before considering how the court might have come out under the statutory definition, it will be useful to first review the statutory elements that define a broker. Under the Act, a broker is one who (1) works for another; (2) for consideration; and (3) holds herself or himself out as engaging in the business of a broker (4) for at least part of the transaction.[47] In the instant case, Walter satisfied the first and third elements; she worked for Dortha and held herself out as a licensed "agent" to the Moores. The consideration and transaction elements pose greater problems, however, since Walter did not receive a fee and the court was split over the issue of whether Walter's activity came before or after the transaction was complete.

With respect to the consideration element, the Act requires brokers to procure licenses if they wish to engage in the real estate business for

44. *Walter,* 700 P.2d at 1224-25.

45. *Id.* at 1225-26.

46. In particular, elements two, seven, and ten are the only elements that are found in the Act.

47. These elements are drawn directly from section 33-28-102(a)(ii). However, element three is a hybrid combining the "single act" language in section 33-28-104 with the only relevant enumerated act in section 33-28-102(a)(ii).

compensation. Yet the Act is silent as to the broker who is licensed but receives no fee, and it is of little assistance in determining whether brokers who work for free are to be held to the same standard as brokers who work for compensation. To overcome the Act's infirmity, the majority in *Walter* could have narrowly construed the "for consideration" phrase and held that a broker must receive some consideration before the purchaser can recover for injuries arising from a broker's transgressions. If the majority had so interpreted the Act, the result would have been the same as under its experiential definition. In other words, since Walter was working for free, she could not have been a broker under the statutory definition and, thus, could not be held to the broker's standard.

The statutory definition is sufficiently flexible, however, for the court to have reached the opposite, and preferable, result. The Act is flexible because the four elements are phrased loosely, allowing for liberal remedial construction. Since the language is open-ended and the court is not "locked into" any particular construction, the *Walter* court was also free to construe the Act broadly. By broadly construing the Act, particularly the consideration and transaction elements, the court could have held Walter liable.

One may recognize intuitively that the quantity of a broker's fee should not affect the quality of the broker's service. The maxim that "you get what you pay for" does not apply in *Walter* because, in that case, the injured party was the purchaser, not the vendor, and the vendor usually pays the broker. A *purchaser* should not be prevented from recovering from a broker for the broker's negligence simply because the *vendor* failed to pay a brokerage fee. To say that a broker who charges too little is to be exempt from liability encourages both the bad businessperson and the shoddy broker. If liability is imposed only when a broker receives a fee, a perverse situation results. The broker who is paid one dollar is held liable while the broker charging nothing is immune to prosecution. Although distinctions and lines are necessarily drawn in law, this line between liability and impunity is unreasonably arbitrary and contrary to good public policy.

At least one court has recognized the problem of such a distinction. In *Canada v. Kearns,*[48] the Texas Court of Civil Appeals held that the consideration requirement in its state's statutory definition of a broker was not dispositive when an injured purchaser sought to hold a broker liable for misrepresentation.

In *Canada,* a real estate salesperson listed her house with her broker, Kearns. Canada bought the house on assurances that the roof did not leak; it did. Kearns argued that because she received no fee for listing the house, she was not a broker within the Texas Real Estate Licensing Act's definition and, hence, not liable. The Texas court, reversing the trial court, refused to interpret the Texas Act so narrowly. The court felt that the broker's gratuitous listing was motivated by the hope of receiving "other

48. 624 S.W.2d 755 (Tex. Ct. App. 1981).

valuable consideration,"[49] but the court specified neither the form of the consideration nor from whom it was received. Although one could interpret the court's holding to require at least something as consideration, the point is that an actual exchange of tangibles is not needed. Goodwill, family harmony, or smooth office relations might be enough to satisfy the statutory definition, at least in Texas.

Under the *Canada* rule, Walter's failure to take a fee would not have to be dispositive. The "other consideration" element could be met by evidence that Walter's assistance was rendered in part to preserve harmonious family relations.

Nonetheless, all four elements must be satisfied in some manner; otherwise, the alleged broker is not a broker within the statutory definition. Thus even assuming that the consideration element is met, the transaction element remains. The *Walter* majority contended that the transaction was complete before Walter became involved because Walter did not alter the parties' prior agreement. Rather, Walter merely wrote down the oral agreement.[50] Justice Rose, in his dissent, contended that Walter had inserted herself into the transaction before it was complete,[51] that is, upon both parties' signing a standard offer, acceptance, and receipt form. But Justice Rose, like the majority, failed to cite any authority to support his position and the dispute remains merely a difference of opinion.

Justice Rose's position, however, appears more reasonable than that of the majority. Until the form was signed, the parties' agreement remained oral. Under Wyoming law, contracts for the sale of real property must be in writing[52] and the document must contain the signature of the party to be charged.[53] Otherwise, the agreement violates the Statute of Frauds and is unenforceable. Since the agreement in *Walter* was unenforceable until signed and in writing, the transaction period extended from the publication of Dortha's advertisement until the document was signed. At any time between, either party could have backed out with impunity. Consequently, the court's finding that a real estate transaction is complete before the parties have complied with the Statute of Frauds tends to reduce the importance of the Statute of Frauds in real estate transactions.

The preferable conclusion would thus be that Walter's involvement, coming before the signing, fell well within the time of the transaction, satisfying the fourth statutory element. That Walter did not alter the agreement's terms upon entering the transaction does not demonstrate the transaction's completion. Rather, Walter's involvement facilitated the agreement's conclusion. Had the Moores not relied upon Walter's status as a licensed real estate agent, they might well have done as the majority

49. *Id.* at 756.
50. *Walter*, 700 P.2d at 1226-27.
51. *Id.* at 1232 (Rose, J., dissenting).
52. WYO. STAT. § 1-23-105(a)(v) (1977 & Supp. 1985).
53. *Id.*; Czapla v. Grieves, 549 P.2d 650 (Wyo. 1976).

suggested they should have done, that is, employed their own expert assistance.[54]

CONCLUSION

The majority's experiential definition is unnecessary. The statutory definition is sufficiently flexible to allow the result the court evidently wished to reach. The court did not settle conclusively whether consideration is a required element or merely one criterion among equals. Further, the court's finding that the conveyance was complete before it was in writing undermines the Statute of Frauds. Only more litigation will resolve these problems. That the court left the decisional law in such a needlessly confused state was an unfortunate mistake.

There are now two disparate definitions for determining whether or not a person is a real estate broker in Wyoming. The Act states that any person who, for another and for consideration, does any single act, enumerated under its definition of a broker, is a broker. The *Walter* decision does not change this. Rather, the court adds its definition and states that if a buyer allows a broker to represent the seller, and the broker does not meet the court's experiential definition, then the buyer may not recover from the broker if the broker misrepresents the property.

This result is ill-considered. The court places upon a potentially unsuspecting buyer the duty to examine the broker-seller agreement and reject the broker if the broker does not meet the majority's ill-defined standard. In fact, under circumstances similar to those in *Walter,* there appears to be no duty that a licensed real estate agent owes to a buyer. Rather, the court has charged the buyer with his own protection,[55] effectively eliminating the Act's protection. This decision undercuts one of the major reasons for having a licensing act, that is, to allow the public to trust real estate agents as the professionals that the court has said they are.[56]

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54. *Walter,* 700 P.2d at 1223.
55. *Id.*
56. Hagar v. Mobley, 638 P.2d at 136.