

MAINE STATE LEGISLATURE

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Yes ✓
January 21, 1966

Leo M. Carignan, Executive Secretary

Real Estate Commission

Phillip M. Kilmister, Assistant

Attorney General

Payment of fees necessary for reinstatement of a non-active broker to active status.

ISSUE:

What is the fee which must be paid by a non-active resident broker who seeks reinstatement to active status?

ANSWER:

\$35.00.

OPINION:

32 N.R.S.A. § 4118-A provides the vehicle by which an active resident real estate broker may become inactive, and also sets forth the guidelines which must be followed when an inactive broker seeks reinstatement to active status. The last paragraph of 32 N.R.S.A. § 4118-A reads as follows:

". . . . Anyone who has surrendered his license as described in this section and who applies for reinstatement of his license to active status shall be subject to all the provisions of this chapter applicable to an original applicant for a license, excepting written examination."
(Emphasis supplied)

The above-quoted paragraph refers in effect to 32 N.R.S.A. § 4110 wherein it is provided that the fee for an original applicant for a broker's license shall be \$35.00.

A strict reading of the applicable statutory language leads to the conclusion that the fee to be charged an inactive broker who seeks reinstatement to active status shall be \$35.00.

We believe it only fair to point out that a court might construe the last paragraph of 4118-A quoted above to be a penalty clause, rather than a valid license fee however.

Factually, what takes place is undeniably the charge of a double fee for the same license. A condition precedent to initial licensure is the payment of a license fee. Then, should a licensed active broker wish to become inactive, he may surrender his license to the Commission. This is not a total abandonment however, and by the payment of renewal fees, the inactive broker preserves his license, or right to act as a realty broker. His license does not expire. According to the language of 4110-A, in order to become active again, the already duly licensed broker must pay another initial license fee. Such a procedure is difficult to justify.

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