

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date October 17, 1968

To Leo M. Carignan, Ex. Secretary

Dept. Real Estate Commission

From Garth K. Chandler, Assistant

Dept. Attorney General

Subject Conviction of Anti-Discrimination Law as Grounds for Revocation
of a Maine Real Estate Broker's License

SYLLABUS:

Determination of whether or not a conviction of a licensed real estate broker of a violation of the State Anti-Discrimination Law is a conviction involving moral turpitude or demonstrating bad faith, dishonest, fraudulent or improper dealings is ultimately a decision for the Administrative Hearing Commissioner or the Courts.

FACTS:

A licensed real estate broker was recently convicted of violating the Anti-Discrimination Law (17 M.R.S.A. § 1301) by refusing housing on the basis of race. The laws dealing with real estate brokers and salesmen provide for the revocation of a broker's license if the broker is convicted of a crime involving moral turpitude [32 M.R.S.A. § 4144 and § 4056 (2)] or if the broker commits acts which constitute or demonstrate bad faith, dishonest, fraudulent or improper dealings [32 M.R.S.A. § 4056 (1)].

QUESTIONS:

1. Does conviction of such a crime present a justiciable issue as to whether or not the licensed real estate broker has committed a crime which involves moral turpitude?

2. Does conviction of such a crime present a justiciable issue as to whether or not the licensed real estate broker has committed a crime which constitutes or demonstrates bad faith, dishonest, fraudulent or improper dealings?

ANSWERS:

1. Yes.

2. Yes.

REASONS:

Moral turpitude has been defined as follows:

"The two words 'moral turpitude' have been defined as 'inherent baseness or vileness

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of principle'; 'the quality of a crime involving grave infringement of the moral sentiment as, distinguished from *malum prohibitum*.' Webster's New International Dictionary. Generally speaking, crimes malum in se involve moral turpitude, while most offenses that are unlawful only because made so by statute, do not. 'Moral turpitude' implies something immoral in itself, regardless of its being punishable by law. It is an act of baseness, vile-ness or depravity in the private or social duties which man owes to his fellowmen or to society in general, contrary to the customary rule of right and duty between man and man. It is something done contrary to justice, honesty, modesty and good morals. The word 'moral' in the phrase 'moral turpitude', seems to be nothing more than emphasis on the word 'turpitude'. See Words and Phrases, Permanent Edition (1940), 'moral turpitude'; 41 Corpus Juris 212; 14 Am. Jur. 761, Secs. 11-14; 27 Cyc. 912; 2 Bouvier's Law Dictionary (Third Edition)." State of Maine v. Jenness, 62 A. 2d 867, 143 Me. 380, 383.

Whether or not moral turpitude is involved in this particular violation is a question for determination by the Court or by the applicable administrative hearing commissioner.

"It is well recognized that moral turpitude cannot be exactly defined as a rule to fit all cases. It may or may not be said to exist, depending on the facts, conditions and circumstances. The record of a conviction does not show moral turpitude when the offense is such that a majority of good citizens would not so consider it, even though other good citizens, with minority ideas of reform, might possibly affirm its existence." Jenness, Ibid p. 384.

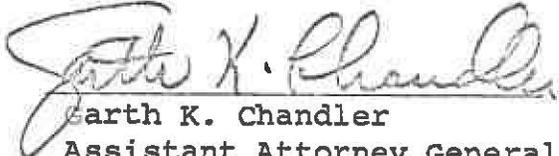
Other definitions of other jurisdictions include:

"Conduct which under all the circumstances is contrary to justice, honesty, modesty, or good morals," Marsh v. State Bar of California, 291 Pac. 583, 589, 210 Cal. 303.

"An act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to the society in general, contrary to the accepted and customary rule of right, and duty between man and man." Trader's General Insurance Company v. Russell, 99 S.W. 2d 1079, 1084, (Tex. Cir. App.).

Similarly, the Hearing Commissioner or a Court must decide whether the conviction and specific acts involved amount to bad faith, dishonest, fraudulent or improper dealings before revocation obtains on those grounds.

GKC/mf


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