

# MAINE STATE LEGISLATURE

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Real Estate Licensing

Licensing Conditions for License

Licensing Conditions not in statute

# STATE OF MAINE

Inter-Departmental Memorandum Date January 5, 1977

To Maine Real Estate Commission

Dept. \_\_\_\_\_

From David P. Cluchey

Dept. \_\_\_\_\_

Subject Approval of Kelly Lombardi as Real Estate Practice Instructor

On November 18, 1976, the Maine Real Estate Commission refused to approve Kelly Lombardi as a real estate practice instructor for a course to be offered at the University of Maine/Machias. The reason given for the refusal was a pending complaint and possible prosecution of Miss Lombardi for violations of Maine real estate laws.

On December 2, 1976, this action was discussed by the Maine Real Estate Commission with David P. Cluchey of the Attorney General's office. At that time reconsideration of the decision made in regard to Miss Lombardi was moved by Chairman Malcolm Lyons and the motion was defeated. Thereafter, on December 16, 1976, Miss Lombardi and her attorney met with the Commission to discuss her approval as an instructor and possible violations of Maine real estate laws. The Commission has taken no further action in regard to Miss Lombardi and the Attorney General's office has elected to put its opinion on the matter in memorandum form.

The powers of the Maine Real Estate Commission are not specifically set forth in the statutes. Title 32 M.R.S.A. §4101-A provides, in part, as follows:

The Commission shall prescribe curricula and standards for educational programs to prepare students for the real estate profession and shall issue a certificate of approval to such educational programs within the State of Maine as meet the requirements of this chapter and of the commission,

This statute delegates to the Commission the authority to prescribe standards for real estate educational programs and to issue a certificate of approval to the programs which meet those standards but says nothing about qualifications of real estate instructors.

The Commission has, however, adopted regulations governing the qualifications of real estate instructors:

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...Approval by the Commission shall also be contingent on the course of study being taught by instructors meeting the qualifications relating to each subject as follows:

- A. Maine Real Estate Law. An attorney admitted to practice before the Maine Bar.
- B. Real Property Valuation. Satisfactory completion of both Course 101 and 201 of the Society of Real Estate Appraisers; or satisfactory completion of both Course 1A and 1B of the American Institute of Real Estate Appraisers; and, in addition, the instructor shall have completed fifty (50) written real property appraisals demonstrating ability to estimate market value in conformity with standards acceptable to the Commission.
- C. Real Estate Practice. A two-year degree in real estate or a four-year degree in any field supplemented by three years fulltime experience in real estate brokerage.
- D. Any person with qualifications determined by the Commission to equal or exceed those qualifications previously listed herein.

There has been no question raised that Miss Lombardi does not meet the qualifications set out in subsection C. The Commission has no other written standards or requirements relating to real estate instructors. Hence the Commission is in the position of arguing that it has some inherent unwritten authority to deny approval of instructors for alleged violations of the real estate laws. In light of the specific standards set forth by the Commission in its regulations this argument is weak at best.

In addition, the facts underlying Miss Lombardi's alleged violations of the real estate laws do not provide a sufficient basis for her prosecution. In the first instance, a possible violation of 32 M.R.S.A. §4003, sharing commissions with an unlicensed person, has been suggested. Miss Lombardi admits that she paid Donna Hall at a rate of \$50 per week for a total of \$200. If §4003 is construed literally it would prohibit the payment of any monies to any person employed by a real estate broker. Since most brokers obtain all of their receipts from commissions or compensation arising from a real estate transaction, the statute is not intended to prohibit a broker from paying for secretarial help, janitorial services, advertising, etc. The most reasonable interpretation of the statute is

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that it prohibits brokers from compensating unlicensed persons in any manner based upon or contingent upon sales of real estate and the commission derived therefore, e.g. compensating with a percentage of each commission. Under this interpretation of the statute Miss Lombardi's payments to Ms. Hall do not constitute a violation.

The second violation which has been suggested is of 32 M.R.S.A. §4056(3), guilty knowledge of Miss Lombardi as to alleged violations of the real estate laws by Ms. Hall. This would first require proving that Ms. Hall had violated 32 M.R.S.A. §4102 by acting as a real estate salesman without a license. In this regard it must be shown that Ms. Hall offered real estate for sale, negotiated the purchase or sale of real estate, or listed or offered to list real estate for sale. While the fact that Ms. Hall showed property may not be enough to constitute a violation of this section, it appears that the taking listings may constitute such a violation.

Given a violation on the part of Ms. Hall, Miss Lombardi's guilty knowledge of that violation must still be proved. The use of the word "guilty" in regard to her knowledge suggests that some sort of specific malicious intent to act as an accessory to a violation of the real estate laws must be shown. In light of Miss Lombardi's testimony before the Commission, this intent would be virtually impossible to prove.

In light of the very tenuous nature of the Commission's claim to authority to deny approval to real estate instructors on grounds other than the specific qualifications set out in the Rules and Regulations of the Commission and the unlikelihood that violations of the real estate laws could be proved against Miss Lombardi, we do not believe that we could successfully defend an appeal of the Commission's denial of approval of Miss Lombardi's application to teach real estate practice.

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