

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

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**Legislative Document**

**No. 1161**

H. P. 838

House of Representatives, February 25, 1971

Referred to Committee on Business Legislation. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Norris of Brewer.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-ONE

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**AN ACT** Revising the Laws Relating to Real Estate Brokers and Salesmen.

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Be it enacted by the People of the State of Maine, as follows:

**Sec. 1. R. S., T. 14, § 2602, sub-§ 10, additional.** Section 2602 of Title 14 of the Revised Statutes, as amended by chapter 354 of the public laws of 1965 and by chapter 318 of the public laws of 1967, is further amended by adding a new subsection 10 to read as follows:

10. **Money deposited.** By reason of any money deposited with him in a broker's trust account under Title 32, section 4004-A, except to the extent provided in that section.

**Sec. 2. R. S., T. 32, § 4001, amended.** The last paragraph of section 4001 of Title 32 of the Revised Statutes is repealed.

**Sec. 3. R. S., T. 32, § 4001, sub-§ 4, additional.** Section 4001 of Title 32 of the Revised Statutes is amended by adding a new subsection 4 to read as follows:

4. **Exceptions.** This chapter shall not apply to any person, partnership, association or corporation who as owner or lessor shall perform any of such acts with reference to property owned or leased by said owner or lessor, nor shall this chapter apply to persons acting as attorney in fact under a duly executed power of attorney from the owner in proper form for record, authorizing the final consummation by performance of any contract for the sale, leasing or exchange of real estate, nor shall this chapter be construed to include in any way the service rendered by an attorney-at-law in the performance of his duties as such attorney-at-law; nor shall it be held to include, while acting as such, a receiver, trustee in bankruptcy, administrator or executor or any

person selling real estate under order of any court, nor to include a trustee, acting under a trust agreement, deed of trust or will, or the regular salaried employees thereof.

This chapter shall not apply to the regular salaried employees of an owner or lessor of real estate acting personally, as a partnership, as an association or as a corporation, when such actions are related to the acquisition of an interest in real estate.

Sec. 4. R. S., T. 32, § 4003, amended. The last sentence of section 4003 of Title 32 of the Revised Statutes, as amended by section 1 of chapter 312 of the public laws of 1969, is further amended to read as follows:

A licensed broker may share his commission with a nonresident ~~broker~~, provided such nonresident ~~broker~~ is licensed as a real estate broker within his own state.

Sec. 5. R. S., T. 32, § 4004-A, amended. The first sentence of section 4004-A of Title 32 of the Revised Statutes, as enacted by section 2 of chapter 223 of the public laws of 1965, is amended to read as follows:

Every real estate broker shall ~~deposit in~~ maintain a trust account or accounts in a banking institution located in the State of Maine for the sole purpose of depositing all earnest money deposits, rental money and all other moneys held by him as a real estate broker in which his clients or other persons with whom he is dealing have an interest. The trust account and the withdrawal orders, including all checks drawn on said account, shall name the subject broker as trustee, and said accounts shall be free from trustee process, except by those persons for whom the broker has made the deposits and then only to the extent of such interest. The broker shall withdraw from said accounts all commissions and fees within a reasonable time after they are earned.

Sec. 6. R. S., T. 32, § 4005, amended. The 4th sentence of section 4005 of Title 32 of the Revised Statutes is amended to read as follows:

Any court of competent jurisdiction shall have full power to try any violation of this chapter, and upon conviction, the court may at its discretion revoke, or suspend, the license of the person, partnership, association or corporation so convicted.

Sec. 7. R. S., T. 32, § 4005, amended. Section 4005 of Title 32 of the Revised Statutes, as amended by section 1 of chapter 359 of the public laws of 1967, is further amended by adding a new sentence at the end to read as follows:

A violation of this chapter shall include performing or attempting to perform those acts which constitute prohibited practices under section 4056.

Sec. 8. R. S., T. 32, § 4103, sub-§ 1, ¶ A, amended. Paragraph A of subsection 1 of section 4103 of Title 32 of the Revised Statutes, as amended by section 91 of chapter 433 of the public laws of 1969, is further amended to read as follows:

A. Is 20 years of age or over if the applicant is applying to be a broker and ~~20 years or over if applying to be a salesman~~;

Sec. 9. R. S., T. 32, § 4103, sub-§ 1, ¶ B, amended. Paragraph B of subsection 1 of section 4103 of Title 32 of the Revised Statutes, as repealed and replaced by section 4 of chapter 312 of the public laws of 1969, is amended to read as follows:

B. Is a resident of the State, qualified to vote in municipal and state elections prior to his application ~~except this paragraph shall not apply when the applicant is a nonresident of this State qualifying under section 4002~~;

Sec. 10. R. S., T. 32, § 4103, sub-§ 2, repealed and replaced. Subsection 2 of section 4103 of Title 32 of the Revised Statutes is repealed and the following enacted in place thereof:

2. Licenses granted. Licenses shall be granted only to persons who are trustworthy and competent to transact the business of real estate broker or salesman in such manner as to safeguard the interests of the public, and only after satisfactory proof has been presented to the commission. Licenses shall be granted to a partnership, association or corporation only if:

A. Every employee, member or officer of such partnership, association or corporation, who acts as a real estate broker or salesman, is licensed by the commission as a real estate broker or salesman, and

B. The partnership, association or corporation designates one of its officers as its designated broker. The person so designated shall be licensed by the commission as a real estate broker.

Sec. 11. R. S., T. 32, § 4106, amended. The first sentence of section 4106 of Title 32 of the Revised Statutes is amended to read as follows:

Such application shall be accompanied by the recommendation of at least 3 citizens, not related to the applicant, who acknowledge before a notary public that they have known the applicant for a period of at least the ~~2 years~~ 6 months immediately prior to the date of the application and who have owned real estate for a period of one year or more in the county in which said applicant resides or has his place of business.

Sec. 12. R. S., T. 32, § 4106, amended. The 3rd sentence of section 4106 of Title 32 of the Revised Statutes is repealed.

Sec. 13. R. S., T. 32, § 4107, amended. The last sentence of the 2nd paragraph of section 4107 of Title 32 of the Revised Statutes, as repealed and replaced by section 3 of chapter 223 of the public laws of 1965 and as amended by section 5 of chapter 359 of the public laws of 1967, is further amended to read as follows:

When a partnership, association or corporation shall have paid a renewal fee of ~~\$15~~ \$5 and shall have designated one of its members or officers as a real estate broker as provided in section 4114, the fees payable by any other mem-

ber or officer actively engaged in the real estate business of such partnership, association or corporation shall be \$10 for the renewal fee, for which a salesman's license shall be issued; but any such member or officer shall be entitled to a broker's license upon the payment of the usual renewal fee therefor.

**Sec. 14. R. S., T. 32, § 4110, amended.** The first sentence of section 4110 of Title 32 of the Revised Statutes, as amended, is further amended to read as follows:

The commission is authorized to require each applicant for a first-time broker's license or a first-time salesman's license or any applicant for a renewal of his broker's or salesman's license who has permitted his license to lapse for more than ~~2 years~~ **one year** since the expiration of the last previous license issued to him to appear in person at such time and place as the commission shall designate for that purpose for a written examination as to his qualifications to act as a broker or salesman and the commission shall collect a fee of \$40 in the case of a broker and \$35 in the case of a salesman.

**Sec. 15. R. S., T. 32, § 4114, repealed and replaced.** Section 4114 of Title 32 of the Revised Statutes is repealed and the following enacted in place thereof:

**§ 4114. Acts authorized**

Each real estate broker's license which may be granted to any person, partnership, association or corporation shall entitle such person, partnership, association or corporation to perform all of the acts contemplated by this chapter.

**Sec. 16. R. S., T. 32, § 4115, amended.** The first sentence of section 4115 of Title 32 of the Revised Statutes is amended to read as follows:

Every license shall expire on the 30th day of June of each year **except those licenses issued under section 4102-A.**

**Sec. 17. R. S., T. 32, § 4117, amended.** The first sentence of section 4117 of Title 32 of the Revised Statutes, as amended by section 5 of chapter 223 of the public laws of 1965, is further amended to read as follows:

Every resident real estate broker **holding an active license** shall maintain a fixed and definite place of business in this State, **separate and distinct from incompatible uses and personnel, and affording the public the right of privacy to which a person is entitled when discussing or revealing personal affairs and finances,** occupied either continually or at regular periods by himself or a licensee where he may be contacted without unreasonable delay, and shall place and maintain a sign in a conspicuous place on the premises at or near the outside entrance to his principal office and all branch offices.

**Sec. 18. R. S., T. 32, § 4117, amended.** Section 4117 of Title 32 of the Revised Statutes, as amended by section 5 of chapter 223 of the public laws

of 1965, is further amended by adding at the end 2 new paragraphs to read as follows:

A real estate broker may change his principal business location from a resident place of business to a nonresident place of business only if that real estate broker holds a license from the state in which he will be located as a real estate broker. The fees charged for such change shall be the same as those fees indicated under the first and 2nd paragraphs of this section.

A real estate broker may change his principal business location from a non-resident place of business to a resident place of business only after he is a resident of the State, qualified to vote in municipal and state elections. The fees charged for such change shall be the same as those fees indicated under the first and 2nd paragraphs of this section.

Sec. 19. R. S., T. 32, § 4118-A, amended. The last paragraph of section 4118-A of Title 32 of the Revised Statutes, as amended by section 70-B of chapter 513 of the public laws of 1965, is further amended by adding after the first sentence a new sentence to read as follows:

After a license is nonactive for 60 months or more, the nonactive licensee must satisfactorily complete a 48-classroom-hour course in real estate practice prior to application for reinstatement to active status.

#### STATEMENT OF FACT

The purposes of this bill are:

T. 14, § 2602, sub-§ 10 —

The additional language would clarify the broker's fiduciary position as trustee and protect the funds of others deposited in the trust account from trustee process by creditors of the broker.

T. 32 —

§ 4001 —

The purpose of this legislation is to provide for greater protection of the public in purchasing real estate when such purchase is made through the regular employee of the owner of said real estate.

§ 4003 —

The purpose of this legislation is to provide for co-brokerage between licensees issued licenses from the Maine Real Estate Commission with real estate brokers from other states who are not licensed by the Maine Real Estate Commission.

§ 4004-A —

As a result of an investigation of recent complaints charging that brokers had failed to return moneys held in their trust account, the commission

learned that some of these moneys were being held as a result of attachment made upon the accounts by an unlicensed spouse seeking a divorce. The commission has been advised by the office of the Attorney General that the provision relating to trust accounts do not prohibit such attachments.

The purpose of this legislation is to prevent and prohibit such attachment and further to prevent commingling of a broker's personal moneys with a client's deposits.

§ 4005 —

A broker's or salesman's license may presently be suspended or revoked by the hearing commissioner under the Revised Statutes, Title 32, section 4056 and a license may be revoked for any violation under chapter 59, by court of competent jurisdiction. This amendment would make it clear that the court's power to revoke or suspend under chapter 59 extends to those grounds referred to in section 4056.

§ 4103, sub-§ 1, ¶ A —

The purpose of this legislation is to simplify the age requirement in qualifying for a real estate license.

§ 4103, sub-§ 1, ¶ B —

• The purpose of this legislation is to clarify the law with reference to applicants who are not residents of the State of Maine.

§ 4106 —

In 1969 the legislation reduced the residency requirement for applicants for real estate license from 2 years to 6 months. The purpose of this legislation is to reduce the length of time for which recommending citizens must know a resident applicant and thereby more effectively decrease the residency requirement to 6 months.

§ 4115 —

The purpose of this legislation is to provide for a license for at least 365 days when such license is issued to the legal representative or widow or widower of an individual proprietor on a temporary basis.

§ 4117 —

The purpose of this legislation is to make more specific the procedures to be followed when a licensee changes his address from a resident to a non-resident or from a nonresident to a resident place of business.

§ 4118-A —

Approximately 40% of all new licensees who have secured licenses by examination since July 1, 1965 have placed their licenses on an inactive status.

The purpose of this legislation is to provide for mandatory education on the part of the licensee if his license is held by the Real Estate Commission for a period of 60 months or more on an inactive basis.