

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 424

H. P. 277

House of Representatives, January 29, 1975

Speaker laid before the House and referred to the Committee on State Government. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Hewes of Cape Elizabeth.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Relating to the Composition and Duties of the Maine Real Estate Commission.

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

Sec. 1. 32 MRSA, § 4002, 2nd ¶, is amended to read:

In its discretion the ~~commission~~ bureau may accept, in lieu of the recommendations and statements required under subchapter III, to accompany an application for license, the license issued to a nonresident broker or salesman in another state, upon payment of the license fee and the filing by the applicant with the ~~commission~~ bureau of a certified copy of the applicant's license issued by such other state. A nonresident applicant, if a broker, shall maintain an active place of business in the state in which he is located. Every nonresident applicant shall file an irrevocable consent that actions may be commenced against such applicant in the proper court of any county of this State in which a cause of action may arise or in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this State on the ~~secretary~~ director of the ~~commission~~ bureau, said consent stipulating and agreeing that such service of such process or pleadings on said ~~secretary~~ director shall be taken and held in all courts to be as valid and binding as if due service had been made upon said applicant personally within this State. Said instrument containing such consent shall be authenticated by the seal thereof, if a corporation, or by the acknowledged signature of a member or officer thereof, if otherwise. All such applications, except from individuals, shall be accompanied by the duly certified copy of the resolution of the proper officers or managing board authorizing the proper officer to

execute the same. In case any process or pleadings mentioned in the case are served upon the ~~secretary~~ director of the ~~commission~~ bureau, it shall be by duplicate copies, one of which shall be filed in the office of the ~~commission~~ bureau and the other immediately forwarded by registered mail to the main office of the applicant against which said process or pleadings are directed.

Sec. 2. 32 MRSA, § 4004-A, 5th and 6th sentences, as last amended by PL 1969, c. 312, § 2, are further amended to read:

These accounts and records shall be opened to inspection by the ~~commission~~ bureau and its duly authorized agents at the broker's usual place of business during regular business hours. The broker shall notify the ~~commission~~ bureau within 30 days after opening any such account of the banking institution in which said account is located and shall authorize the ~~commission~~ bureau, in writing, to confirm the balance of the funds held in his trust account with the banking institution in which the trust account is maintained, within one day following an examination of the broker's records by the ~~commission~~ bureau or its duly authorized agents.

Sec. 3. 32 MRSA, § 4005, 5th sentence, is amended to read:
All fines and penalties over and above the cost of court proceedings shall inure to the ~~commission~~ bureau.

Sec. 4. 32 MRSA, § 4051, is repealed and the following enacted in place thereof:

§ 4051. Bureau; board; membership; term; vacancies; rules and regulations

There is hereby created the Bureau of Real Estate, in this chapter referred to as the "bureau," to do all things necessary and proper for carrying out the provisions of this chapter within the guidelines established by the Board of Real Estate Brokers and Salesmen. A director employed by the Commissioner of Business Regulation, subject to the Personnel Law, shall be the head of the bureau.

Further, there is created the Board of Real Estate Brokers and Salesmen, in this chapter referred to as the "board," to consist of the bureau director and 4 residents of this State appointed by the Governor, 3 of whom shall have been engaged as licensed real estate brokers or salesmen in this State for at least 10 years immediately prior to the date of appointment and one member whose occupation is other than that of a real estate broker or salesman. Of the members appointed by the Governor, one shall be appointed for one year; one shall be appointed for 2 years; one shall be appointed for 3 years; and one shall be appointed for 4 years, beginning on the effective date of this Act. Successors of the members appointed by the Governor shall be appointed for terms of 4 years or the unexpired term in the event of a vacancy. Upon qualification of the members appointed, the board shall organize by selecting from its members a chairman and shall establish guidelines by which the bureau shall carry out the provisions of this chapter. The board may also promulgate and amend necessary rules and regulations to aid the bureau in carrying out the provisions of this chapter.

Sec. 5. 32 MRSA, § 4052, as last amended by PL 1973, c. 59, is further amended to read:

§ 4052. Compensation

The salary of the director shall be fixed by the Commissioner of Business Regulation subject to the Personnel Law. Each member of the ~~commission board~~ appointed by the Governor shall receive as full compensation for each day actually spent on the work of said ~~commission board~~ the sum of \$35 and his actual necessary expenses incurred in the performance of duties pertaining to his office.

Sec. 6. 32 MRSA, § 4054, is amended to read:

§ 4054. Seal; evidence; inspection of records

The ~~commission board~~ shall adopt a seal with such design as the ~~commission board~~ may prescribe engraved thereon, by which it shall authenticate its proceedings. Copies of all records and papers in the office of the ~~commission bureau~~, duly certified and authenticated by the seal of said ~~commission board~~, shall be received in evidence in all courts equally and with like effect as the original. All records kept in the office of the ~~commission bureau~~ under authority of this chapter shall be open to public inspection under such rules and regulations as shall be prescribed by the ~~commission board~~.

Sec. 7. 32 MRSA, § 4055, as amended by PL 1973, c. 585, § 10, is further amended to read:

§ 4055. Disposal of fees; expenses

The fees collected under this chapter shall be paid forthwith by the ~~commission bureau~~ to the Treasurer of State with a detailed statement thereof and shall constitute a fund to be known as the "Real Estate Fund." Said fund shall be kept as a separate account by said Treasurer of State and he shall pay therefrom, upon vouchers signed by the ~~chairman of the commission~~ Commissioner of the Department of Business Regulation and approved by the State Controller, the cost and expenses of administering this chapter. All of the costs and expenditures of the ~~commission bureau and board~~ shall be paid only from said fund and in no event shall any payments for the expenses of the ~~commission bureau or board~~ exceed the amount received by said treasurer from said ~~commission bureau~~. Any moneys remaining in the Real Estate Fund at the end of the fiscal year shall be carried forward to the credit of the said fund for the succeeding year. The ~~commission board~~ may, within the moneys available in the "Real Estate Fund," defray the cost of an educational program for real estate brokers and salesmen. Such program shall be under the direction and supervision of the Commissioner of the Department of Business Regulation.

Sec. 8. 32 MRSA, § 4056, sub-§ 1, first sentence, is amended to read:

The ~~commission may, upon its own motion~~ bureau may in its discretion, and shall, upon the verified complaint in writing of any person, provided such complaint or such complaint together with evidence, documentary or other-

wise, presented in connection therewith shall make out a prima facie case, investigate the actions of any real estate broker or real estate salesman, or any person who shall assume to act in either such capacity within this State.

Sec. 9. 32 MRSA, § 4056, sub-§§ 2, 3 and 4, as amended by PL 1973, c. 303, § 3, are further amended to read:

2. **Acts of licensee for which applicant would be refused license.** The Administrative Court Judge shall, in addition, have power, after hearing, to revoke or suspend any license issued under this chapter, at any time, where the licensee performs any act or acts, or offers or attempts or agrees to do any act or acts, for which the ~~commission~~ bureau may lawfully refuse to issue a license to any applicant.

3. **Knowledge of violation.** Any unlawful act or violation of any of the provisions of this chapter by any real estate salesman, employee or partner or associate of a licensed real estate broker shall not be cause for the revocation of a license of such real estate broker, partial or otherwise, unless it shall appear to the satisfaction of the ~~commission~~ board that said employer, partner or associate had guilty knowledge thereof.

4. **Investigations.** The ~~commission~~ bureau shall investigate any violation of this chapter by licensees and non-licensees and **upon the consent of the board** report its finding from time to time to the office of the Attorney General or appropriate county attorney for prosecution.

Sec. 10. 32 MRSA, § 4057, is amended to read:

§ 4057. Publication of list of licensees

The ~~commission~~ bureau shall annually publish a list of the names and addresses of all licensees licensed by it under this chapter and of all persons whose licenses have been suspended or revoked within one year, together with such other information relative to the enforcement of this chapter as it may deem of interest to the public. Such lists shall be mailed by the ~~commission~~ bureau to any person in this State upon request.

Sec. 11. 32 MRSA, § 4058, as amended by PL 1973, c. 303, § 3, is further amended to read:

§ 4058. Denial of license; violations

If the ~~commission~~ bureau shall determine that any applicant is not qualified to receive a license, a license shall not be granted to such applicant, and if the Administrative Court Judge shall determine that any licensee is guilty of a violation of any of the provisions of this chapter, the license shall be suspended or revoked.

Sec. 12. 32 MRSA, § 4101, is amended to read:

§ 4101. Rules and regulations

The ~~commission~~ board shall make and enforce rules and regulations connected with the application for any license as shall be deemed necessary to administer and enforce this chapter.

Sec. 13. 32 MRSA, § 4101-A, first ¶, as enacted by PL 1973, c. 448, § 2, is amended to read:

The ~~commission board~~ is authorized to formulate rules and regulations relative to the establishment and operation of schools offering courses designed to prepare students for the examinations of the ~~commission bureau~~ for licenses for real estate brokers and salesmen and relative to the courses of study, instruction, instructor qualifications, grades and grading systems and related matters. Nothing in this section shall be construed to grant the ~~commission board~~ any authority over any such courses conducted by the University of Maine or any other public higher education institution or any institution authorized by law to grant a degree.

Sec. 14. 32 MRSA, § 4101-A, sub-§§ 1, 2 and 3, as enacted by PL 1973, c. 448, § 2, are amended to read:

1. **Certificate of approval.** Any such school shall first obtain a certificate of approval from the bureau and thereafter abide by the rules and regulations of the ~~commission board covering such schools~~.

2. —**suspension or revocation.** The ~~commission board~~ shall have authority to suspend or revoke the certificate of approval of any school for violation of this section or of the rules and regulations promulgated pursuant thereto.

3. **Prohibitions.** It shall be unlawful for any school to offer courses or to conduct classes of instruction in real estate subjects without first procuring a certificate of approval; or having obtained a certificate of approval, to represent that its students are assured of passing examinations given by the ~~commission bureau~~, or to represent that the issuance of a certificate of approval is a recommendation or endorsement of the school to which it is issued or of any course of instruction given by it.

Sec. 15. 32 MRSA, § 4102, is amended to read:

§ 4102. License required

It shall be unlawful for any person, partnership, association or corporation to act as a real estate broker or real estate salesman, or to advertise or assume to act as such real estate broker or real estate salesman, without a license issued by the ~~commission bureau~~.

Sec. 16. 32 MRSA, § 4102-A, as last amended by PL 1969, c. 590, § 63, is further amended to read:

§ 4102-A. Temporary license in case of death

In the event of the death of a licensed broker, who is the sole proprietor of a real estate business, the ~~commission bureau~~ shall, upon application by his legal representative, issue, without examination, a temporary license to such legal representative, or to an individual designated by him and approved by the ~~commission bureau~~ and the payment of the prescribed fee of \$15, which shall authorize such temporary licensee to continue to transact said business for a period not to exceed one year from the date of death subject to all other provisions of sections 4001 to 4119, except that such temporary license shall not be renewed.

Sec. 17. 32 MRSA, § 4103, sub-§ 1, first sentence, is amended to read:

An applicant for a real estate broker's or salesman's license shall submit to the ~~commission~~ bureau written evidence, verified by oath, that the applicant:

Sec. 18. 32 MRSA, § 4103, sub-§ 1, ¶ E, as amended by PL 1965, c. 223, § 1, is further amended to read:

E. Has a high school education or its equivalent approved by the ~~commission~~ bureau. If the applicant is applying for a real estate broker's license, he must in addition have satisfactorily completed an educational course in the field of real estate approved by the ~~commission~~ bureau or been employed as a licensed salesman full time for at least a year. The conditions of this paragraph shall not be applicable to persons who have held any license from the ~~commission~~ bureau prior to December 31, 1963;

Sec. 19. 32 MRSA, § 4103, sub-§ 2, as repealed and replaced by PL 1971, c. 468, § 8, is amended to read:

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~~ bureau. 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~~ bureau 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~~ bureau as a real estate broker.

Sec. 20. 32 MRSA, § 4104, is amended to read:

§ 4104. Application

Every applicant for a real estate broker's or salesman's license shall apply therefor in writing upon blanks prepared or furnished by the ~~commission~~ bureau.

Sec. 21. 32 MRSA, § 4106, 3rd sentence, is amended to read:

The ~~commission~~ bureau, with due regard to the paramount interests of the public, may require such other proof as shall be deemed desirable as to the honesty, truthfulness, integrity, reputation and competency of the applicant.

Sec. 22. 32 MRSA, § 4110, first sentence, as last amended by PL 1967, c. 359, § 7, is further amended to read:

The ~~commission~~ bureau ~~is authorized to~~ shall 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 since the expiration of the last previous license issued to him to appear in person at such time and place as the ~~commission~~ bureau shall designate for that purpose for a written examination as

to his qualifications to act as a broker or salesman and the ~~commission bureau~~ shall collect a fee of \$40 in the case of a broker and \$35 in the case of a salesman.

Sec. 23. 32 MRSA, § 4110, 4th sentence, is amended to read:

Such fee shall entitle any applicant for a license to take the examination which is next given by the ~~commission bureau~~ without additional charge should the applicant fail to pass the first examination.

Sec. 24. 32 MRSA, § 4110, 5th sentence, as last amended by PL 1963, c. 223, § 4, is further amended to read:

The ~~commission bureau~~ shall retain the fee irrespective of whether or not the examination is taken or passed.

Sec. 25. 32 MRSA, § 4111, 2nd sentence, is amended to read:

Before refusing to issue any license, the ~~commission bureau~~ shall set the application down for a hearing and determination **by the board.**

Sec. 26. 32 MRSA, § 4112, first and 2nd sentences, are amended to read:

The ~~commission bureau~~ shall issue to each licensee a license in such form and size as shall be prescribed by the ~~commission board.~~

Each license shall have imprinted thereon the seal of the ~~commission board~~ and in addition shall contain such matter as shall be prescribed by the ~~commission board.~~

Sec. 27. 32 MRSA, § 4113, is amended to read:

§ 4113. Pocket cards

The ~~commission bureau~~ shall prepare and deliver to each licensee a pocket card, which card among other things shall contain an imprint of the seal of the ~~commission board~~ and shall certify that the person whose name appears thereon is a licensed real estate broker or real estate salesman, as the case may be; and if it is a real estate salesman's card, it shall contain the name and address of his employer. The matter to be printed on such pocket card, except as herein set forth, shall be prescribed by the ~~commission board.~~

Sec. 28. 32 MRSA, § 4115, 2nd and 3rd sentences, as last repealed and replaced by PL 1973, c. 729, § 6, are amended to read:

The ~~commission bureau~~ shall issue a new pocket card for each ensuing biennial period in the absence of any reason or condition which might warrant the refusal of granting of a license, upon receipt of the written request of the applicant and the biennial fee therefor. Licenses which have not been renewed must be returned to the ~~Real Estate Commission bureau~~ by registered mail not later than 30 days after expiration.

Sec. 29. 32 MRSA, § 4115-A, first sentence, as enacted by PL 1973, c. 729, § 7, is amended to read:

The ~~commission bureau~~ is authorized, for implementation and administration of biennial licensing, to issue licenses for less than a 2-year term.

Sec. 30. **32 MRSA, § 4117, 2nd ¶**, as amended by PL 1973, c. 50, § 2, is further amended to read:

Notice in writing shall be given to the ~~commission bureau~~ by each licensee of any change of principal business location no later than 10 days after the change of such location, whereupon the ~~commission bureau~~ shall issue a new license for the unexpired period for a fee of \$5. In the event such notice is not given before said date, the ~~commission bureau~~ shall issue the new license for the unexpired period for a fee of \$10.

Sec. 31. **32 MRSA, § 4118**, is amended to read:

§ 4118. Termination of employment

When any real estate salesman shall be discharged or shall terminate his employment with the real estate broker by whom he is employed, it shall be the duty of such real estate broker to immediately deliver or mail by registered mail to the ~~commission bureau~~ such real estate salesman's license. The real estate broker shall, at the time of mailing such real estate salesman's license to the ~~commission bureau~~, address a communication to the last known residence address of such real estate salesman, which communication shall advise such real estate salesman that his license has been delivered or mailed to the ~~commission bureau~~. A copy of such communication to the real estate salesman shall accompany the license when mailed or delivered to the ~~commission bureau~~. It shall be unlawful for any real estate salesman to perform any of the acts contemplated by this chapter, either directly or indirectly, under authority of said license from and after the date of receipt of said communication advising him that his license has been delivered or mailed to the ~~commission bureau~~. Prompt notice in writing within 10 days shall be given to the ~~commission bureau~~ by any real estate salesman of a change of employer, and of the name of the new employer into whose service such salesman is about to enter or has entered, and a new license shall thereupon be issued by the ~~commission bureau~~ to such salesman for the unexpired term of the original license, provided such new employer shall be a duly licensed real estate broker. The salesman shall pay a transfer fee of \$2 for such new license. Another license shall not be issued to such real estate salesman until he shall return his former pocket card to the ~~commission bureau~~ or shall satisfactorily account to it for the same. No more than one license shall be issued to any real estate salesman for the same period of time.

Sec. 32. **32 MRSA, § 4118-A, first sentence**, as last amended by PL 1969, c. 312, § 5, is further amended to read:

Any member of a partnership or association or officer or director of a corporation licensed under this chapter who does not desire to do, or perform, any of the acts or services enumerated in section 4001, subsections 1, 3 and 4, and any registered broker or salesman who is a resident of Maine who desires to preserve his registration, during a period while not engaged as a broker or salesman, may surrender his license to the ~~commission bureau~~ which shall hold said license until such time as the licensee shall apply for reinstatement to active status.

FISCAL NOTE

The annual expenditures of special revenue account 4177.1 would be increased by approximately \$2,500.

STATEMENT OF FACT

The purpose of this Act is to provide for the appointment of a nonrealtor to the Real Estate Commission. It is also designed to provide a more efficient handling of the growing day-to-day workload of the Real Estate Commission.