

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 195

H. P. 157

House of Representatives, February 1, 1977

Referred to Committee on Business Legislation. Sent up for concurrence and 2,000 ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Boudreau of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT Relating to the Practice of Real Estate Brokers and Salesmen.

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

32 MRSA § 4056, as last amended by PL 1975, c. 767, §§ 55-58, is repealed and the following enacted in its place:

§ 4056. Investigations; hearings; suspension or revocation of license

1. Investigations. The director shall, upon order of the commission or upon receipt of a verified written complaint, investigate the actions of any real estate broker, real estate salesman or any person who shall assume to act in either capacity. Upon completion of the investigation, the director shall report his findings to the commission. The commission shall consider the findings of the investigation and may convene a hearing to assist it in determining whether a violation of this chapter has occurred.

A. If the commission finds that a violation of this chapter has occurred, it shall report its findings to the office of the Attorney General or appropriate district attorney for prosecution. If the commission finds that a violation has occurred and that mitigating circumstances are present, the commission may, in lieu of prosecution, issue a reprimand to any person it finds has violated this chapter.

B. If the commission finds that no violation of this chapter has occurred, it shall dismiss the matter and so advise all parties involved.

2. Hearings. Hearings may be conducted by the commission to assist with investigations, to determine if cause exists for denial of a license or to determine cause for revocation or suspension of a certificate of approval or for any other purpose. Notice shall be given to all interested parties at least 10

days prior to the date on which the hearing is set.

3. Suspension or revocation of license. After hearing, the Administrative Court Judge as designated in Title 5, Part 6, shall have the power to suspend or revoke any license issued under this chapter at any time when:

A. A licensee is found guilty of one or more of the following acts:

- (1) Intentionally using advertising which is misleading or inaccurate in any material particular or in any way misrepresents any property, terms, values, policies or services;
- (2) Failure to account for or remit any money coming into his possession belonging to others;
- (3) Commingling the money or other property of his principals with his own;
- (4) Failure to maintain a trust account and deposit all money received by a broker acting in such capacity or as trustee, or the temporary custodian of the funds of others, in a real estate transaction unless all parties having an interest in the funds have agreed otherwise in writing;
- (5) Accepting, giving or charging any undisclosed commission, rebate or direct profit on expenditures made for a principal;
- (6) Representing or attempting to represent a real estate broker, other than the licensed broker, without the express knowledge and consent of the licensed broker;
- (7) Accepting a commission or other valuable consideration by a salesman from anyone other than the broker under whom he is licensed;
- (8) Acting in a dual capacity of agent and undisclosed principal in any transaction;
- (9) Guaranteeing or authorizing any person to guarantee future profits which may result from the resale of real property;
- (10) Placing a sign on any property offering it for sale or rent without the written consent of the owner or his authorized agent;
- (11) Offering real estate for sale or lease without the knowledge and consent of the owner or his authorized agent or on terms other than those authorized by the owner or his authorized agent;
- (12) Inducing any party to a contract of sale or lease to break such contract for the purpose of substituting, in lieu thereof, a new contract with another principal;
- (13) Negotiating a listing, sale, exchange or lease of real estate directly with an owner or lessor if it is known that such owner has a written outstanding contract in connection with the property granting an exclusive agency or an exclusive right to sell listing to another broker;

- (14) Using prizes, money, free gifts or other valuable consideration as inducements to (a) secure customers to purchase, rent or lease property when the awarding of prizes, money, free gifts or other valuable consideration is conditioned upon the purchase, rental or lease, or (b) secure clients to list properties with licensees, or (c) solicit, sell or offer for sale real estate by offering free lots or conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real estate;
- (15) Paying a commission or compensation to any unlicensed person for performing the services of a broker or salesman. This subsection shall not apply to a broker who is licensed in his state of residence;
- (16) Failure to include a fixed date of expiration in any written listing agreement and failing to leave a copy of the agreement with the principal;
- (17) Failure to deliver within a reasonable time a completed copy of any purchase agreement or offer to buy or sell real estate to the purchaser and to the seller;
- (18) Failure by a broker to deliver to the seller in every real estate transaction, at the time the transaction is closed, a complete, detailed closing statement showing all of the receipts and disbursements handled by such broker for the seller, failing to deliver to the buyer a complete statement showing all money received by the broker in the transaction from such buyer and how and for what the same was disbursed, and failing to retain true copies of such statements in his files. Furnishing of such statements by an escrowee shall relieve the broker's responsibility and shall be deemed to be in compliance with this provision;
- (19) Making any substantial misrepresentations;
- (20) Acting for more than one party in a transaction without the knowledge of all parties for whom he acts;
- (21) Failure by a salesman to place, as soon after receipt as practicable, in the custody of his licensed broker any deposit money or other money or funds entrusted to him by any person dealing with him as the representative of his licensed broker;
- (22) Violating any rule or regulation promulgated by the commission;
- (23) Representing to any lender, guaranteeing agency or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon;
- (24) Failure of a broker to properly supervise the activities of every employee, member, officer or licensee of that broker;
- (25) Failure to make known to any purchaser any interest the licensee has in the property he is selling;
- (26) Failure of the licensee to inform the buyer and seller at the time an offer is presented that he will be expected to pay certain closing costs;

(27) Accepting a note as earnest money unless that fact is communicated to the owner prior to his acceptance of the offer to purchase, and such fact is shown in the contract;

(28) Failure to deposit any check or cash received as an earnest money deposit within 48 hours of acceptance of the offer;

(29) Failure to produce any requested documents, book or record in the licensee's possession or under his control, concerning any real estate transaction under investigation by the commission;

(30) Failure to submit all written bona fide offers to a seller when such offers are received prior to the seller accepting an offer in writing and until the broker has knowledge of the acceptance;

(31) Failure to disclose to a buyer a known material defect, not openly apparent, regarding the condition of a parcel of real estate of which a broker or salesman has knowledge;

(32) Failing, within a reasonable time, to account for or remit any money coming into his possession which belongs to others; or

(33) The broker or salesman shall have been convicted or entered a plea of nolo contendere in any court to any Class C crime, or above, or to Class D crimes involving moral turpitude or the equivalent thereto; or

B. A licensee is found guilty of any act or conduct, whether of the same or different character than specified in paragraph A, which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealings.

4. Acts relating to qualifications for a license. The Administrative Court Judge shall, in addition, have authority to revoke or suspend any license issued under this chapter at any time when the licensee performs any act or acts, or offers or attempts or agrees to do any act or acts, for which the commission may lawfully refuse to issue a license to any applicant.

5. Acts of salesmen. Any unlawful act or violation of this chapter by any salesman shall be cause for revocation or suspension of a license held by the real estate broker under whom the salesman is licensed if it shall appear to the satisfaction of the court that the real estate broker had knowledge thereof or he had negligently failed to supervise the activities of his salesman.

STATEMENT OF FACT

Laws relating to investigations, as a result of increasingly active enforcement, have proven ambiguous. This revision is intended to clarify the commission's role in enforcement and more specifically set forth those activities which would violate the license law.