

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1849

6
7 S.P. 726

In Senate, January 15, 1986

8 Approved for introduction by a majority of the Legislative Council
pursuant to Joint Rule 26.

9 Referred to the Committee on Business and Commerce and ordered
printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Trafton of Androscoggin.

Cosponsored by Senator Sewall of Lincoln, Representative Aliberti of
Lewiston and Representative Murray of Bangor.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-SIX
16

17 AN ACT to Provide for the Licensing of
18 Persons Engaged in Property
19 Management.
20

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

23 Sec. 1. 32 MRSA §4001, sub-§§4 and 5 are enacted
24 to read:

25 4. Property manager. A "property manager" is any
26 person, firm, partnership, association or corporation
27 who for compensation or valuable consideration offers
28 to perform, attempts to perform or performs on behalf
29 of the owner of real estate a combination of fiscal,
30 administrative and physical management of the real
31 estate. A person engaged solely in the renting or
32 leasing of real estate shall not be deemed a property
33 manager.

34 5. Site manager. A "site manager" is any person
35 employed or engaged by or on behalf of a licensed

1 property manager to perform renting, leasing or other
2 property management services as authorized by the li-
3 icensed property manager.

4 Sec. 2. 32 MRS §4002, first ¶ is amended to
5 read:

6 A nonresident of this State may become a real es-
7 tate broker, ~~or~~ a real estate salesman, property man-
8 ager or site manager by conforming to all of the con-
9 ditions of this section and this chapter, providing
10 he has held a license in his own state as such a bro-
11 ker, ~~or~~ salesman, property manager or site manager
12 for at least the 3 years immediately preceding the
13 date of his application in this State and maintains a
14 fixed and definite place of business in his own
15 state.

16 Sec. 3. 32 MRS §4005, as amended by PL 1983, c.
17 171, §5, is further amended to read:

18 §4005. Penalties

19 Any real estate broker, ~~or~~ real estate salesman,
20 property manager or site manager licensed as such
21 ~~real estate broker or real estate salesman~~ in accord-
22 ance with this chapter, who fails to renew his, her
23 or its license biennially and continues to act as a
24 real estate broker or real estate salesman, shall be
25 punished by a fine of not less than \$100 nor more
26 than \$400. Any person or corporation violating any
27 other provision of this chapter shall upon conviction
28 thereof, if a natural person, be punished by a fine
29 of not more than \$1000, plus the amount of compensa-
30 tion received in the subject transaction, or by im-
31 prisonment for not more than 6 months, or by both;
32 and, if a corporation, be punished by a fine of not
33 more than \$2,000, plus the amount of compensation re-
34 ceived in the subject transaction. Any officer or
35 agent of a corporation, or member or agent of a part-
36 nership or association, who shall personally partici-
37 pate in or be accessory to any violation of this
38 chapter by such partnership, association or corpora-
39 tion, shall be subject to the penalties prescribed
40 for individuals. Any court of competent jurisdiction
41 shall have full power to try any violation of this
42 chapter, and upon conviction, the court may at its

1 discretion revoke, or suspend, the license of the
2 person, partnership, association or corporation so
3 convicted. All fines and penalties over and above
4 the cost of court proceedings shall inure to the com-
5 mission. A violation of this chapter shall include
6 performing or attempting to perform those acts which
7 constitute prohibited practices under section 4056.

8 Sec. 4. 32 MRSA §4051, as amended by PL 1975, c.
9 767, §50, is further amended to read:

10 §4051. Declaration of policy

11 It is declared to be the policy of the State of
12 Maine that real estate brokers, ~~and~~ salesmen, propert-
13 ty managers and site managers shall be supervised by
14 the Real Estate Commission in a manner to insure that
15 they meet standards which will promote public under-
16 standing and confidence in the business of real es-
17 tate.

18 Sec. 5. 32 MRSA §4051-A, sub-§2, as repealed and
19 replaced by PL 1983, c. 511, is amended to read:

20 2. Qualifications. ~~Each industry member~~ Three
21 members of the commission shall have been a real es-
22 tate broker or salesman by vocation in this State for
23 at least 5 years prior to appointment. One member of
24 the commission shall have been engaged in property
25 management for at least 5 years prior to appointment.
26 The public member shall have had no professional or
27 financial connection with the real estate business.

28 Sec. 6. 32 MRSA §4051-B, sub-§§2 and 3, as
29 amended by PL 1977, c. 172, are amended to read:

30 2. Practices. Practices of real estate brokers,
31 ~~and~~ salesmen, practices of property managers and site
32 managers consistent with standards set forth in this
33 chapter; and

34 3. Qualifications. Qualifications and procedures
35 for the approval, ~~and~~ operation of real estate and
36 property management schools.

37 Sec. 7. 32 MRSA §4055, as repealed and replaced
38 by PL 1975, c. 767, §54, is amended to read:

1 §4055. Disposal of fees; expenses

2 The fees collected under this chapter shall be
3 paid forthwith by the commission to the Treasurer of
4 State with a detailed statement thereof and shall
5 constitute a fund to be known as the "Real Estate
6 Fund." Such fund shall be kept as a separate account
7 by the Treasurer of State and he shall pay therefrom,
8 upon vouchers signed by the director and approved by
9 the Commissioner of Business Regulation, the cost and
10 expenses of administering this chapter. All of the
11 costs and expenditures of the commission shall be
12 paid only from such fund and in no event shall any
13 payments for the expenses of the commission exceed
14 the amount received by the treasurer from that com-
15 mission. Any moneys remaining in the Real Estate
16 Fund at the end of the fiscal year shall be carried
17 forward to the credit of that fund for the succeeding
18 year. The commission may, within the moneys availa-
19 ble in the Real Estate Fund, defray the cost of an
20 educational program for real estate brokers, and
21 salesmen, for property managers and site managers.
22 Such program may entail the dissemination of informa-
23 tion pertinent to the real estate business and mate-
24 rial for school curricula. Such program shall be un-
25 der the direction and supervision of the commission.

26 Sec. 8. 32 MRSA §4056, sub-§1, as repealed and
27 replaced by PL 1983, c. 171, §8, is amended to read:

28 1. Investigations. The director, upon receipt
29 of a verified written complaint or in accordance with
30 guidelines and policies prescribed by the commission,
31 shall investigate the actions of any real estate li-
32 censee, including any property manager or site
33 manager or any person who assumes to act in the ca-
34 pacity of a licensee. Upon completion of the inves-
35 tigation, the director shall take one of the follow-
36 ing actions, and give notice to all interested par-
37 ties of the action and of their rights to further
38 pursue the matter:

39 A. Dismiss the complaint;

40 B. In the case of an investigation without a
41 complaint, elect not to pursue the matter;

1 C. File the complaint or charge, subject to fur-
2 ther action at a later time if required in the
3 public interest;

4 D. With the consent of the parties and subject
5 to approval of the commission and commission
6 counsel, execute a consent agreement providing
7 for resolution of the basis of the dispute; or

8 E. Issue a staff complaint for a hearing before
9 the commission, setting forth the basis for the
10 complaint and, in the director's discretion, any
11 recommended disposition.

12 Sec. 9. 32 MRSA §4101-A, first ¶, as amended by
13 PL 1979, c. 221, §1, is further amended to read:

14 The commission shall prescribe curricula and
15 standards for educational programs to prepare entry
16 level students for the real estate profession, in-
17 cluding property management, and shall issue a cer-
18 tificate of approval to such educational programs
19 within the State of Maine as meet the requirements of
20 this chapter and of the commission. At least every 2
21 years, the commission shall thoroughly review each
22 approved educational program prior to reissuing a
23 certificate of approval for such program. Nothing in
24 this section shall be construed to grant the commis-
25 sion any authority over any such programs conducted
26 by the University of Maine, any other public higher
27 educational institution or any institution authorized
28 by law to grant a degree.

29 Sec. 10. 32 MRSA §4102, as amended by PL 1975,
30 c. 767, §63, is further amended to read:

31 §4102. License required

32 It shall be unlawful for any person, partnership,
33 association or corporation to act as a real estate
34 broker or real estate salesman, property manager or
35 site manager or to advertise or assume to act as such
36 real estate broker or real estate salesman, without a
37 license issued by the commission.

38 Sec. 11. 32 MRSA §4102-A, as repealed and re-
39 placed by PL 1979, c. 693, §1, is amended to read:

1 §4102-A. Temporary license in case of death

2 Upon proper application and fee, the commission
3 is authorized to issue, without written examination,
4 a temporary real estate broker or property manager
5 license in the event of the death of a real estate
6 broker or property manager. The license term shall
7 not exceed one year from the date of death and may be
8 issued to the deceased broker's or manager's legal
9 representative or a person appointed by the legal
10 representative and approved by the commission.

11 Sec. 12. 32 MRSA §4103, first ¶, as enacted by
12 PL 1983, c. 171, §11, is amended to read:

13 An applicant for a real estate broker's license
14 or salesman's license, property manager's license or
15 site manager's license shall submit to the commission
16 the following:

17 Sec. 13. 32 MRSA §4104-A is enacted to read:

18 §4104-A. Information to be provided by applicant for
19 property manager's license

20 In addition to the application materials required
21 by section 4103, an applicant for a property
22 manager's license shall submit to the commission the
23 following:

24 1. Associates. The name of the person, firm,
25 partnership, association or corporation for whom the
26 applicant will be managing property;

27 2. Location. The location of the place or places
28 for which the license is derived;

29 3. Experience. The period of time, if any, dur-
30 ing which the applicant has been engaged in the prop-
31 erty management business; and

32 4. Education. Evidence that the applicant has
33 either satisfactorily completed an educational course
34 in the field of property management approved by the
35 commission and been engaged as a full-time site man-
36 ager for one year or satisfactorily completed 2 years
37 in a degree program meeting commission guidelines and

1 been engaged as a site manager for one year within
2 the 3 years immediately preceding the date of appli-
3 cation.

4 5. Transitional provision. Notwithstanding the
5 requirements of subsection 4, prior to July 1, 1987,
6 the commission may issue a one-year provisional prop-
7 erty manager's license to any person who presents ev-
8 idence satisfactory to the commission that he has
9 been engaged in property management as a profession
10 for the year preceding the date of application. Dur-
11 ing the term of the provisional license, the person
12 must complete an educational course in the field of
13 property management approved by the commission or
14 pass an examination prescribed by the commission.

15 Sec. 14. 32 MRSA §4105-A is enacted to read:

16 §4105-A. Information to be provided by applicant for
17 site manager's license

18 In addition to the application materials required
19 by section 4103, an applicant for a site manager's
20 license shall submit to the commission the following:

21 1. Associates. The name and address of the ap-
22 plicant's last employer and the name and place of
23 business of the person, firm, partnership, associa-
24 tion or corporation then employing the applicant or
25 into whose service the applicant is about to enter;

26 2. Experience. The period of time, if any, dur-
27 ing which the applicant has been engaged in the prop-
28 erty management business;

29 3. Manager's recommendation. A written statement
30 by the property manager, into whose service the ap-
31 plicant is about to enter, stating that, in the
32 manager's opinion, the applicant is honest, truthful
33 and of good reputation and recommending that the li-
34 cence be granted to the applicant; and

35 4. Education. Evidence that the applicant has
36 successfully completed an educational program meeting
37 guidelines established by the commission and pertain-
38 ing to landlord and tenant laws in Maine; except that
39 the provisions of this subsection need not be met if

1 the applicant elects to qualify by written examina-
2 tion designated by commission rule for this purpose.

3 Notwithstanding the requirements of subsection 4,
4 prior to July 1, 1987, the commission may issue a
5 6-month provisional site manager's license to any
6 person. During the term of the provisional license,
7 the person shall qualify for a site manager's license
8 by course of study or examination as provided in this
9 section.

10 Sec. 15. 32 MRSA §4106, first ¶, as repealed and
11 replaced by PL 1983, c. 171, §14, is amended to read:

12 In addition to the application materials required
13 elsewhere in this chapter, an association, partner-
14 ship or corporation applying for a license to conduct
15 the business of a real estate broker or property
16 manager shall submit to the commission the following;

17 Sec. 16. 32 MRSA §4106, sub-§3, as enacted by PL
18 1983, c. 171, §14, is amended to read:

19 3. Designated broker or manager. Where the ap-
20 plicant is an association, partnership or corpora-
21 tion, a designation of one of its officers, who is
22 licensed by the commission as a real estate broker or
23 property manager, as its designated broker or
24 manager.

25 Sec. 17. 32 MRSA §4107, sub-§2, ¶¶J and K are
26 enacted to read:

27 J. One-year provisional (property manager only).
2840

29 K. Six-month provisional (site manager only)..30

30 Sec. 18. 32 MRSA §4107, sub-§3, as enacted by PL
31 1983, c. 171, §15, is amended to read:

32 3. Conversion. A real estate salesman who ap-
33 plies and qualifies for a real estate broker license
34 shall receive a real estate broker license for any
35 unexpired period remaining on the salesman's license
36 without charge. A site manager who applies and quali-
37 fies for a property manager license shall receive a

1 property manager license for any unexpired period re-
2 maining on the site manager's license without charge.

3 Sec. 19. 32 MRSA §4108, sub-§1, as enacted by PL
4 1983, c. 171, §17, is amended to read:

5 1. Grounds for denial. An application for a
6 real estate broker's license ~~or~~, salesman's license,
7 property manager's license or site manager's license
8 or renewal may be denied for any of the following
9 reasons:

10 A. The applicant fails to submit to the commis-
11 sion any materials, statements or fees required
12 by this chapter, including the requirements of
13 section 4115-C;

14 B. The applicant fails to submit satisfactory
15 proof to the commission that he is trustworthy
16 and competent to transact the business of real
17 estate broker ~~or~~, salesman, property manager or
18 site manager in such manner as to safeguard the
19 interests of the public;

20 C. The applicant makes a material misrepresenta-
21 tion in applications or related materials to the
22 commission;

23 D. Subject to Title 5, chapter 341, the commis-
24 sion determines that the applicant's conviction
25 of a crime disqualifies him for the license; or

26 E. If the applicant is required under section
27 4110 to submit to a written examination, and he
28 fails to achieve a passing score on the examina-
29 tion.

30 Sec. 20. 32 MRSA §4108, sub-§2, ~~¶¶~~A and B, as
31 enacted by PL 1983, c. 171, §17, are amended to read:

32 A. None of the principal officers holds a cur-
33 rent real estate broker license or property
34 manager's license; or

35 B. Any employee, member or officer of the asso-
36 ciation, partnership or corporation, who acts as
37 a real estate broker ~~or~~, salesman, property man-

1 ager or site manager, is not licensed by the com-
2 mission as a real estate broker or, salesman,
3 property manager or site manager.

4 Sec. 21. 32 MRSA §4110, first ¶, as amended by
5 PL 1981, c. 76, §3, is further amended to read:

6 Each applicant for an original real estate broker
7 or, real estate salesman, property manager or site
8 manager license or any person whose license has been
9 expired for 2 years or more shall be required to pay
10 an examination fee and appear in person at the time
11 and place designated by the commission for the pur-
12 pose of written examination, except as provided in
13 section 4002. The commission may not issue a license
14 unless the applicant receives a passing examination
15 score.

16 Sec. 22. 32 MRSA §4112, as amended by PL 1983,
17 c. 171, §21, is further amended by adding at the end
18 a new paragraph to read:

19 The license of each site manager shall be deliv-
20 ered or mailed to the property manager by whom the
21 site manager is employed and shall be kept in the
22 custody and control of the property manager.

23 Sec. 23. 32 MRSA §4113, as amended by PL 1983,
24 c. 171, §22, is further amended to read:

25 §4113. Pocket cards

26 The director may prepare and deliver to each li-
27 censee a pocket card, which among other things shall
28 certify that the person whose name appears thereon is
29 a licensed real estate broker or, real estate sales-
30 man, property manager or site manager, as the case
31 may be; and if it is a real estate salesman's card
32 or site manager's card, it shall contain the name of
33 the real estate broker or property manager by whom he
34 is employed.

35 Sec. 24. 32 MRSA §4115, as amended by PL 1979,
36 c. 196, §1, is further amended to read:

37 §4115. Expiration; renewals; revocation

1 Licenses shall expire on June 30th, or at such
2 other times as the Commissioner of Business Regula-
3 tion may designate, of each biennial period for which
4 it was issued, except those licenses issued under
5 section 4102-A. The commission shall issue a new
6 pocket card for each ensuing biennial period in the
7 absence of any reason or condition which might war-
8 rant the refusal of granting a license, upon receipt
9 of the written request of the applicant, the biennial
10 fee therefor and upon the applicant's presenting evi-
11 dence of compliance with the requirements of section
12 4115-B. Licenses which have not been renewed must be
13 returned to the commission by certified mail not la-
14 ter than 30 days after expiration. The revocation or
15 expiration of a broker's or property manager's li-
16 cense shall automatically suspend every real estate
17 salesman's or broker's or site manager's license
18 granted to any person by virtue of his employment by
19 the broker whose license has been revoked, pending a
20 change of employer and the issuance of a new license.
21 Such new license shall be issued without charge if
22 granted during the same biennial period in which the
23 original was granted.

24 Sec. 25. 32 MRSA §4115-D is enacted to read:

25 §4115-D. Continuing education for property managers
26 and site managers

27 Each biennial licensing period, actively licensed
28 property managers and site managers shall attend 12
29 clock hours of property management educational pro-
30 grams approved by the commission.

31 Sec. 26. 32 MRSA §4118, as amended by PL 1979,
32 c. 693, §8, is further amended by adding at the end a
33 new paragraph to read:

34 The provisions of this section shall apply to the
35 site managers employed by property managers.

36 Sec. 27. 32 MRSA §4118-A, as amended by PL 1979,
37 c. 693, §9, is further amended to read:

38 §4118-A. Nonactive brokers

1 Any member of a partnership or association or of-
2 ficer or director of a corporation licensed under
3 this chapter who does not desire to do, or perform,
4 any of the acts or services enumerated in section
5 4001, subsections 2, 3, and 4 and 5, and any regis-
6 tered broker ~~or~~ salesman, property manager or site
7 manager who is a resident of Maine who desires to
8 preserve his registration during a period while not
9 engaged as a broker ~~or~~ salesman or manager, may sur-
10 render his license to the commission which shall hold
11 such license until such time as the licensee shall
12 apply for reinstatement to active status. During
13 this period of inactive status, such broker ~~or~~ sales-
14 man or manager shall be required to pay the same re-
15 newal fees as an active broker ~~or~~ salesman or
16 manager. Upon surrender of his license all listings
17 in possession of a broker shall be cancelled.

18 This section shall apply only to brokers and
19 salesmen who continue to be bona fide residents of
20 the State of Maine during the period of nonactive
21 status.

22 Anyone who has surrendered his license pursuant
23 to this section and who applies for reinstatement of
24 his license to active status shall be subject to all
25 the provisions of this chapter applicable to an orig-
26 inal applicant for a license except written examina-
27 tion and fee. The licensee shall demonstrate to the
28 commission that he has within the previous biennium
29 attended 12 clock hours of courses designated in sec-
30 tion 4115-B or section 4115-D.

1

STATEMENT OF FACT

2 This bill requires persons engaged in the busi-
3 ness of managing real estate to obtain a property
4 manager's license from the Maine Real Estate Commis-
5 sion. Persons engaged in real estate management under
6 the direction of a property manager must obtain a
7 site manager's license from the commission. The bill
8 also provides that one member of the commission be a
9 licensed property manager.

10 Current law appears to require persons engaged in
11 real estate management to obtain real estate broker's
12 licenses. The training and education requirements for
13 real estate brokers are largely irrelevant to the
14 profession of property management.

15 This bill recognizes property management as a
16 distinct profession within the real estate field and
17 seeks to promote a high standard of practice for
18 property managers while, at the same time, affording
19 appropriate protection to the public who come in con-
20 tact with property managers.

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