

# MAINE STATE LEGISLATURE

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EIGHTIETH LEGISLATURE

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HOUSE

NO. 136

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House of Representatives, February 17, 1921.

Referred to Committee on Judiciary and 500 copies ordered printed. Sent up for concurrence.

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. Cram of Portland.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD ONE THOUSAND  
NINE HUNDRED AND TWENTY-ONE

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AN ACT to Define, Regulate and License Real Estate Brokers and Real Estate Salesmen; to Create a State Real Estate Commission; and to Provide a Penalty for a Violation of the Provisions Hereof.

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

Section 1. It shall be unlawful for any person, firm, partnership, association, copartnership or corporation, whether operating under an assumed name or otherwise, from and after January first, nineteen hundred and twenty-two, to engage in the business or capacity, either directly or indirectly, of a real estate broker or real estate salesman within this state without first obtaining a license under the pro-

8 visions of this act. License shall be granted only to per-  
9 sons who are trustworthy and bear a good reputation for  
10 honesty and fair dealing and are competent to transact the  
11 business of a real estate broker or a real estate salesman,  
12 in such a manner as to safe-guard the interests of the pub-  
13 lic, and only after satisfactory proof thereof has been pre-  
14 sented to the commission.

Sect. 2. A real estate broker within the meaning of this  
2 act is any person, firm, partnership, association, copartner-  
3 ship or corporation, who for a compensation or valuable  
4 consideration sells or offers for sale, buys or offers to buy,  
5 or negotiates the purchase or sale or exchange of real es-  
6 tate, or who leases, or offers to lease or rents or offers for  
7 rent any real estate or the improvements thereon for others,  
8 as a whole or partial vocation. A real estate salesman with-  
9 in the meaning of this act is any person who for a com-  
10 pensation or valuable consideration is employed either di-  
11 rectly or indirect'y by a licensed real estate broker to sell  
12 or offer to sell, or buy or offer to buy, or to negotiate the  
13 purchase or sale or exchange of real estate, or lease or of-  
14 fer to lease, rent or offer for rent any real estate for others  
15 as a whole or partial vocation. The provisions of this act  
16 shall not apply to any person, firm, partnership, associa-  
17 tion, copartnership or corporation, who as owner or lessor  
18 shall perform any of the acts aforesaid with reference to  
19 property owned by them, nor shall the provisions of this  
20 act app'y to persons holding a du'y executed power of at-  
21 torney from the owner for the sale, leasing, or exchange

22 of real estate, nor shall this act be construed to include in  
23 any way the services rendered by an attorney at law in  
24 the performance of his duties as such attorney at law, nor  
25 shall it be held to include a receiver, trustee in bankruptcy,  
26 administrator or executor, or any person selling real estate  
27 under order of any court, nor to a trustee selling under a  
28 deed of trust.

Sect. 3. One act for a compensation or valuable consid-  
2 eration of buying or selling real estate of or for another,  
3 or offering for another to buy or sell or exchange real es-  
4 tate, or leasing or renting or offering to rent real estate,  
5 except as herein specifically excepted, shall constitute the  
6 person, firm, partnership, association, copartnership or cor-  
7 poration performing, offering or attempting to perform any  
8 of the acts enumerated herein, a real estate broker or a real  
9 estate salesman within the meaning of this act.

Sect. 4. There is hereby created the Maine Real Estate  
2 Commission. The governor shall appoint three persons,  
3 whose vocation for a period of at least five years prior to  
4 the date of their appointment shall have been that of a  
5 real estate broker or a real estate salesman; one member  
6 shall be appointed for a term of one year; one member  
7 shall be appointed for a term of two years; one member  
8 for a term of three years: and until their successors are  
9 appointed and qualify, thereafter the term of the members  
10 of said commission shall be for three years and until their  
11 successors are appointed and qualify. Members to fill va-  
12 cancies shall be appointed for the unexpired term. The

13 commission may do all things necessary and convenient for  
14 carrying into effect the provisions of this act and may from  
15 time to time promulgate necessary rules and regulations.

Each member of the commission shall receive as com-  
2 pensation for each day actually spent on the work of said  
3 commission the sum of ten dollars per day and his actual  
4 and necessary expenses incurred in the performance of du-  
5 ties pertaining to his office.

Sect. 5. The commission immediately upon the qualifi-  
2 cation of the member appointed in each year, shall organ-  
3 ize by the choice of one of its members as president and  
4 another of its members as secretary. The member chosen  
5 as secretary shall receive annually the sum of fifty dollars  
6 (\$50) as compensation as secretary, in addition to the com-  
7 pensation received by him as a member of the commis-  
8 sion. The secretary may employ such clerical assistance  
9 as the commission shall deem necessary, the expense there-  
10 for to be paid by the commission.

Sect. 6. The commission shall adopt a seal with such  
2 design as the commission may prescribe engraved there-  
3 on, by which it shall authenticate its proceedings. Copies  
4 of all records and papers in the office of the commission,  
5 duly certified and authenticated by the seal of said com-  
6 mission shall be received in evidence in all courts equally  
7 and with like effect as the original. All records kept in  
8 the office of the commission under authority of this act shall  
9 be open to public inspection under such rules and regulations  
10 as shall be prescribed by the commission.

Sect. 7. All fees and charges collected by the commission  
2 under the provisions of this act sha'l be paid into the gen-  
3 eral fund in the state treasury. All expenses incurred by  
4 the commission under the provisions of this act, including  
5 compensations to members, secretaries, clerks and assist-  
6 ants, shall be paid out of the general fund in the state treas-  
7 ury upon warrants of the auditor general from time to  
8 time when vouchers therefor are exhibited and approved  
9 by the commission. Provided, that the total expense for  
10 every purpose incurred shall not exceed the total fees and  
11 charges collected and paid into the state treasury.

Sect. 8. All applications for license shall be made in writ-  
2 ing to the commission. Such application shall also be ac-  
3 companied by the recommendation of at least two citizens,  
4 real estate owners, not related to the applicant, who have  
5 owned real estate for a period of one year or more, in the  
6 county in which said applicant resides, or has his place of  
7 business, which recommendation shall certify that the ap-  
8 plicant bears a good reputation for honesty, competency  
9 and fair dealing, and recommending that a license be  
10 granted to the applicant. Every applicant for a license  
11 shall furnish a sworn statement setting forth his present  
12 address, both of business and residence, the complete ad-  
13 dress of all former places where he may have resided or  
14 been engaged in business, or acted as a real estate sales-  
15 man, for a period of sixty days or more, during the last  
16 five years, and the length of such residence, together with  
17 the name of at least one real estate owner in each of the

18 said counties where he may have resided, engaged in busi-  
19 ness, or acted as a salesman. Every applicant for a brok-  
20 er's license shall also state the name of the person, firm,  
21 partnership, association, copartnership or corporation, and  
22 the location of the place, or places, for which said license  
23 is desired, and set forth the period of time, if any, which  
24 said applicant has been engaged in the business, and shall  
25 be executed by such person, or by an officer or member  
26 thereof. Every real estate broker shall maintain a place  
27 of business in this state. In case a real estate broker main-  
28 tains more than one place of business within this state, a  
29 duplicate license shall be issued to such broker for each  
30 branch office so maintained. Each duplicate license shall  
31 be issued without additional charge. Every applicant for  
32 a salesman's license shall, in addition to the requirements  
33 of the first paragraph of this section, also set forth the  
34 period of time, if any, during which he has been engaged  
35 in the business, stating the name of his last employer, and  
36 the name and the place of business of the person, firm, part-  
37 nership, association, copartnership or corporation then em-  
38 ploying him, or in whose employ he is to enter. The ap-  
39 plication shall be accompanied by a written statement by  
40 the broker in whose employ he is to enter, stating that in  
41 his opinion the applicant is honest, truthful and of good  
42 reputation, and recommending that the license be granted  
43 to the applicant. The commission shall have the right to  
44 prescribe the form of application for all licenses. The com-

45 mission is hereby authorized to require and procure any  
46 and all satisfactory proof as shall be deemed desirable in  
47 reference to the honesty, truthfulness, reputation and com-  
48 petency of any applicant for a real estate broker's or sales-  
49 man's license or of any of the officers or members of any  
50 such applicant prior to the issuance of any such license.  
51 The commission is expressly vested with the power and  
52 authority to make, prescribe and enforce any and all such  
53 rules and regulations connected with the application for  
54 any license, as shall be deemed necessary to administer and  
55 enforce the provisions of this act.

Sect. 9. The commission shall issue to each licensee a  
2 license in such form and size as shall be prescribed by  
3 the commission. This license shall show the name and  
4 address of the licensee and in case of a real estate sales-  
5 man's license, shall show the name of the real estate broker  
6 by whom he is employed. Each license shall have im-  
7 printed thereon the seal of the commission, and in addi-  
8 tion to the foregoing shall contain such matter as shall be  
9 prescribed by the commission. The license of each real  
10 estate salesman shall be delivered or mailed to the real  
11 estate broker by whom such real estate salesman is em-  
12 ployed and shall be kept in the custody and control of such  
13 broker. It shall be the duty of each real estate broker to  
14 conspicuously display his license in his place of business.  
15 Notice in writing shall be given to the commission by each  
16 licensee of any change of principal business location, where-  
17 upon the commission shall issue a new license for the un-



18 expired period without charge. A change of business loca-  
19 tion without notification to the commission and without the  
20 issuance by it of a new license shall automatical'y cancel  
21 the license theretofore issued. The commission shall pre-  
22 pare and deliver to each licensee a pocket card, not larger  
23 than two and one-fourth inches in width and three and  
24 three-fourths inches in length, which card among other  
25 things shall contain the name and address of the emp'oyer,  
26 and shall contain an imprint of the seal of the commission  
27 and shall certify that the person whose name appears there-  
28 on is a licensed real estate salesman or real estate broker,  
29 as the case may be, the matter to be printed on such pocket  
30 card, except as above set forth, shall be prescribed by the  
31 commission.

Sect. 10. When any real estate salesman shall be dis-  
2 charged or shall terminate his employment with the real  
3 estate broker by whom he is employed, he shall forthwith  
4 cease to be a licensed salesman. It shall be the duty of  
5 such real estate broker to immediately deliver or mail by  
6 registered mail to the commission such real estate sales-  
7 man's license, together with information as to date of his  
8 termination of service. The real estate broker shall at the  
9 time of mailing such real estate salesman's license to the  
10 commission address a communication to the last known  
11 residence address of such real estate salesman, which com-  
12 munication shall advise such real estate salesman that his  
13 license has been delivered or mailed to the commission. A  
14 copy of such communication to the real estate salesman

15 shall accompany the license when mailed or delivered to  
16 the commission. Another license shall not be issued to  
17 such real estate salesman until he shall return his former  
18 pocket card to the commission or shall satisfactorily ac-  
19 count to it for same. Not more than one license shall be  
20 issued to any real estate salesman for the same period of  
21 time.

Sect. 11. The annual fee for each real estate broker's li-  
2 cense shall be ten dollars. The annual fee for each real  
3 estate salesman's license shall be two dollars. Each real  
4 estate broker's license which may be granted to an indi-  
5 vidual shall entitle such individual to perform all of the  
6 acts contemplated by this act without any further appli-  
7 cation upon his part and without payment of any fee other  
8 than the real estate broker's annual fee. Each real estate  
9 broker's license granted to any firm, partnership, associa-  
10 tion, copartnership or corporation consisting of more than  
11 one person shall entitle such real estate broker to desig-  
12 nate one of its officers or members, who upon compliance  
13 with the terms of this act shall, without the payment of  
14 any further fee, upon issuance of said broker's license be  
15 entitled to perform all of the acts of a real estate salesman  
16 contemplated by this act. The person so designated, how-  
17 ever, must make application for a salesman's license, which  
18 application shall accompany the application of the real es-  
19 tate broker, and be filed with the commission at the same  
20 time as the application of the real estate broker for license.  
21 If in any case the person so designated by a real estate

22 broker shall be refused a license by the commission or in  
23 case such person ceases to be connected with such real es-  
24 tate broker, said broker shall have the right to designate  
25 another person, who shall make application as in the  
26 first instance. Every application for a license under the  
27 provisions of this act shall be accompanied by the license  
28 fee herein prescribed and every license shall expire on the  
29 thirty-first day of December of each year. In the absence  
30 of any reason or condition which might warrant the refusal  
31 of the granting of a license, the commission shall issue a  
32 new license for each ensuing year upon receipt of the  
33 written request of the applicant and the annual fee therefor  
34 as herein required. The revocation of a broker's license  
35 shall automatically suspend every real estate salesman's  
36 license granted to any person by virtue of his employment  
37 by the broker whose license has been revoked, pending a  
38 change of employer and the issuance of a new license. Such  
39 new license shall be issued without charge, if granted during  
40 the same year in which original license was granted.

Sect. 12. It shall be unlawful for any real estate sales-  
2 man to accept a commission or valuable consideration for  
3 the performance of any of the acts herein specified from  
4 any person, except his employer who must be a licensed  
5 real estate broker.

Sect. 13. The commission may upon its own motion and  
2 shall upon the verified complaint in writing of any person,  
3 investigate the actions of any real estate broker or real  
4 estate salesman or any person who shall assume to act in

5 either such capacity within this State and shall have the  
6 power to suspend for a period less than the unexpired por-  
7 tion of the licensed period, or to revoke any license issued  
8 under the provisions of this act at any time where the  
9 licensee, in performing or attempting to perform any of the  
10 acts mentioned herein, is deemed to be guilty of:

(a) Intentionally making any substantial misrepresenta-  
2 tion, or

(b) Making any false promises of a character likely to  
2 influence, persuade or induce, or

(c) Pursuing a continued and flagrant course of misrep-  
2 resentation or the making of false promises through agents  
3 or salesmen or advertising or otherwise, or

(d) Acting for more than one party in a transaction with-  
2 out the knowledge of all parties thereto, or

(e) Representing, or attempting to represent, a real estate  
2 broker other than the employer, without the express knowl-  
3 edge and consent of the employer, or

(f) Failure to account for or to remit for any moneys  
2 coming into his possession which belongs to others, with  
3 intent to defraud the person rightfully entitled thereto, or

(g) Paying a commission or valuable consideration to  
2 any person in this state not licensed under the provisions of  
3 this act, or

(h) Any other conduct whether of the same or a different  
2 character than hereinbefore specified, which constitutes dis-  
3 honest dealing.

This act shall not be construed to relieve any person from

2 civil liability or criminal prosecution under the general laws  
3 of this state.

Sect. 14. The commission shall, before suspending or re-  
2 voking any license and at least ten days prior to the date  
3 set for the hearing, notify in writing the holder of such  
4 license of any charges made and shall afford said licensee  
5 an opportunity to be heard in person or by counsel in refer-  
6 ence thereto. Such written notice may be served by de-  
7 livery of same personally to the licensee or by mailing same  
8 by registered mail to the last known business address of  
9 such licensee. If said licensee be a salesman, the commis-  
10 sion shall also notify the broker employing him of the  
11 charges, by mailing notice by registered mail to the broker's  
12 last known business address. The hearing on such charges  
13 shall be at such time and place as the commission shall pre-  
14 scribe. The commission shall have the power to subpoena  
15 and bring before it any person in this state or take  
16 testimony of any such person by deposition, with the same  
17 fees and mileage in the same manner as prescribed by law  
18 in judicial procedure in the supreme judicial court of this  
19 state in civil cases. If the commission shall determine that  
20 any licensee is guilty of a violation of any of the provisions  
21 of this act, said license shall be suspended or revoked. The  
22 findings of fact made by the commission, acting within its  
23 powers, shall in the absence of fraud be conclusive, but the  
24 supreme judicial court shall have the power to review  
25 questions of law involved in any final decision or deter-  
26 mination of the commission: Provided, That application

27 is made by the aggrieved party within thirty days after  
28 such determination by certiorari, mandamus or by any other  
29 method permissible under the rules and practices of said  
30 court or the laws of this state, and to make such further  
31 orders in respect thereto as justice may require.

Sect. 15. Any unlawful act or violation of any of the pro-  
2 visions of this act upon the part of any real estate sales-  
3 man, or employe, or of any officer or member of a licensed  
4 real estate broker, shall not be cause for the revocation of a  
5 license of any real estate broker, partial or otherwise unless  
6 it shall appear to the satisfaction of the commission that the  
7 real estate broker had guilty knowledge thereof.

Sect. 16. A non-resident of this state may become a real  
2 estate broker or a real estate salesman by conforming to all  
3 the conditions of this paragraph and this act. Every non-  
4 resident applicant shall file an irrevocable consent that  
5 suits and actions may be commenced against such appli-  
6 cant in the proper court of any county of this state in which  
7 a cause of action may arise in which the plaintiff may re-  
8 side, by the service of any process or pleading authorized  
9 by the laws of this state on the secretary of the commission,  
10 said consent stipulating and agreeing that such service of  
11 such process or pleadings on said secretary shall be taken  
12 and held in all courts to be as valid and binding as if due  
13 service had been made upon said applicant in the state of  
14 Maine. Said instrument containing such consent shall be  
15 authenticated by the seal thereof, if a corporation, or by  
16 the acknowledged signature of a member or officer thereof,

17 if otherwise. All such applications, except from indi-  
18 viduals, shall be accompanied by the duly certified copy of  
19 the resolution of the proper officers or managing board  
20 authorizing the proper officer to execute same. In case any  
21 process or pleadings mentioned in this act are served upon  
22 the secretary of the commission, it shall be by duplicate  
23 copies, one of which shall be filed in the office of the com-  
24 mission and the other immediately forwarded by registered  
25 mail to the main office of the applicant against which said  
26 process or pleadings are directed.

Sect. 17. The commission shall at least semi-annually  
2 publish a list of the names and addresses of all licensees  
3 licensed by it under the provisions of this act, and of all  
4 persons whose license has been suspended or revoked with-  
5 in one year, together with such other information relative  
6 to the enforcement of the provisions of this act as it may  
7 deem of interest to the public. One of such lists shall be  
8 mailed to the county clerk in each county of the state and  
9 shall be held by said county clerk as a public record. Such  
10 lists shall also be mailed by the commission to any person in  
11 the state upon request.

Sect. 18. Should the courts declare any section or  
2 provision of this act unconstitutional, such decision shall  
3 affect only the section or provision so declared to be uncon-  
4 stitutional and shall not affect any other section or part of  
5 this act.

Sect. 19. Any person, firm, partnership association, co-  
2 partnership or corporation violating the provisions of this

3 act shall upon conviction thereof, if a person, be punished  
4 by a fine of not less than one hundred dollars nor to exceed  
5 the sum of two thousand dollars, or by imprisonment for a  
6 term not to exceed two years or by both such fine and im-  
7 prisonment, in the discretion of the court, and if a corpo-  
8 ration, be punished by a fine of not to exceed five thousand  
9 dollars.