

# MAINE STATE LEGISLATURE

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# EIGHTY-THIRD LEGISLATURE

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**House Document**

**No. 364**

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H. P. 1071                      House of Representatives, Mar. 9, 1927.

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

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. Kinsman of Augusta.

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## STATE OF MAINE

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

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AN ACT to Define, Regulate, and License Real Estate Brokers and Real Estate Salesmen; to Create the Maine Real Estate Commission, Providing for the Appointment of Its Members, Defining Its Powers and Duties; Providing for Payment of Its Expenses, Prescribing Certain Offenses and Penalties for Violations Thereof.

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

### REAL ESTATE BROKER AND SALESMAN DEFINED

Section 1. A real estate broker is and shall be any person,  
2 firm, partnership, co-partnership, association or corporation  
3 who for a compensation or valuable consideration sells or  
4 offers for sale, buys or offers to buy, or negotiates the pur-  
5 chase or sale or exchange of real estate, or who leases or

6 offers to lease, rents or offers for rent, any real estate or  
7 the improvements thereon for others, as a whole or partial  
8 vocation.

A real estate salesman is and shall be any person who for  
2 a compensation or valuable consideration is employed either  
3 directly or indirectly by a real estate broker, owner or  
4 lessor, to sell or offer to sell, or to buy or offer to buy, or  
5 to negotiate the purchase or sale of real estate, or to lease,  
6 to rent or offer for rent any real estate, or to negotiate  
7 leases thereof, or of the improvements thereon, as a whole  
8 or partial vocation.

The term real estate broker or real estate salesman shall not  
2 apply to any person, co-partnership, association or corpora-  
3 tion, who as owner or lessor shall perform any of the acts,  
4 aforesaid, nor to persons acting as attorney-in-fact under  
5 a duly executed power of attorney from the owner author-  
6 izing the final consummation by performance of any con-  
7 tract for the sale, leasing, or exchange of real estate, nor to  
8 include the service of any attorney-at-law in the perform-  
9 ance of his duties as such attorney-at-law; nor to include,  
10 while acting as such, a receiver, trustee in bankruptcy, ad-  
11 ministrator or executor, not to include a trustee acting under  
12 a trust agreement, deed of trust, or will, or the regular  
13 salaried employees thereof; provided, however, that when  
14 a shareholder or part owner of a lot, sub-division, or tract  
15 of land, sells such property and receives from the sale of  
16 same a percentage or commission over and extra of a mere

17 shareholder or part-owner's profit, such shareholder or part-  
18 owner acting in the interests of same shall be deemed a  
19 broker or salesman who shall be required to have a certifi-  
20 cate and occupational license and subject to the penalties  
21 provided in this act.

One act for a compensation or valuable consideration of  
2 buying or selling real estate of or for another, or offering  
3 for another to buy or sell, or exchange real estate, or leas-  
4 ing, or renting, or offering to rent real estate except as herein  
5 specifically excepted, shall constitute the person, firm, part-  
6 nership, co-partnership, association or corporation perform-  
7 ing, offering or attempting to perform any of the acts  
8 enumerated herein, a real estate broker or a real estate sales-  
9 man and subject to the provisions hereof.

The term "license" in this act, unless otherwise specifically  
2 referred to, shall mean both the registration certificate pro-  
3 vided and the occupational license.

MAINE REAL ESTATE COMMISSION CREATED—  
POWERS—DUTIES—FEES

Sect. 2. There is hereby created the Maine Real Estate  
2 Commission, hereinafter referred to as "the commission,"  
3 to consist of three persons, to be appointed by the governor,  
4 whose vocation for at least four years prior to their ap-  
5 pointment has been that of a real estate broker; one member  
6 shall be appointed for one year; one member shall be ap-  
7 pointed for two years; one member shall be appointed for  
8 three years; and, until their successors are appointed and

9 qualified; thereafter the term of the members of said com-  
10 mission shall be for three years and until their successors  
11 are appointed and qualified; members to fill vacancies shall  
12 be appointed for the unexpired term.

Following the qualification of the members of the com-  
2 mission they shall immediately organize for business each  
3 year; as the new member is appointed the commission shall  
4 reorganize and select from its number a chairman, who shall  
5 be the executive officer of said commission, and a secretary.  
6 Two members of said commission shall constitute a quorum  
7 and may promulgate such necessary rules and regulations  
8 as are deemed advisable.

The board be and it is hereby empowered and it shall be  
2 its duty to investigate persons doing a real estate business  
3 in this state with or without a license either as brokers or  
4 salesmen to ascertain if they are violating any of the pro-  
5 visions of this law, and keep a record of the names of all  
6 persons holding a license either as broker or salesman and  
7 also keep a record showing the names of all persons whose  
8 licenses have been suspended or revoked, or to whom license  
9 has been refused.

The board shall at least annually, publish said registration  
2 list of names and addresses of all licensees and of all per-  
3 sons whose license has been suspended or revoked together  
4 with such other information relative to the enforcement of  
5 this act as it may deem of public interest by sending such  
6 lists or other information to each county tax collector for

7 public record. Such information may also be mailed to any  
8 person upon request or may be published by the commission  
9 in the newspapers.

The commission shall establish and maintain its headquar-  
2 ters at a place designated by said commission, which desig-  
3 nated place may be changed in the discretion of said com-  
4 mission.

The members of the commission shall serve without com-  
2 pensation, but they shall be reimbursed for their actual and  
3 necessary expenses incurred in the performance of their  
4 duties.

The commission shall employ, and at its pleasure discharge  
2 a secretary and such attorneys, investigators, clerks, and  
3 assistants as shall be deemed necessary and shall outline  
4 their duties and fix their compensation.

The commission shall obtain such office space, furniture,  
2 stationery, fuel, light and other things for the proper con-  
3 venience and necessity of said commission.

The commission shall adopt a seal by which it shall authen-  
2 ticate its proceedings.

All registration fees shall be collected by the commission  
2 under the provisions of this act, and shall be paid into the  
3 state treasury on the first of each month for the previous  
4 month, accounting to be made upon blanks furnished by the  
5 state comptroller; said funds shall be kept in a special fund,  
6 to be known as the real estate commission fund, which is  
7 hereby created, and the funds so created be and the same

8 are hereby appropriated and made available for defraying  
9 the expenses of the administration of this act.

All expenses incurred by the commission shall be paid out  
2 of the real estate commission fund in the state treasury  
3 upon warrants of the comptroller, when vouchers therefor  
4 are exhibited, approved by the commission, provided that  
5 the total expense incurred by said commission shall not  
6 exceed the total of said real estate commission fund.

It shall be unlawful for any person, firm partnership, co-  
2 partnership, association or corporation to do business as a  
3 real estate broker or salesman until they or it shall have  
4 paid occupational license fee, and registration fee as fol-  
5 lows: The annual fee for each real estate brokers' state  
6 occupation license shall be \$10.00; the annual registration  
7 fee for each real estate broker in addition thereto shall be  
8 \$3.00; the annual state occupational license for each real  
9 estate salesman shall be \$5.00; and in addition thereto an  
10 annual registration fee of \$3.00. Said registration fees  
11 shall be paid into a special fund of the state treasury known  
12 as the real estate commission fund. The said occupational  
13 license fee shall be paid to the tax collector, and the same  
14 accounted for as now provided by the general laws of this  
15 state with reference to occupational license taxes.

No person shall be permitted to recover in any court in  
2 this state for services rendered, or claimed to have been  
3 rendered in the sale or purchase of real estate unless such  
4 person has at the time of such transaction complied with

5 the provisions of this act as to payment of the occupational  
6 license and registration fees above provided.

APPLICATION FOR REGISTRATION CERTIFICATE—  
NON-RESIDENT BROKERS AND SALESMEN.

Sect. 3. Every application for a real estate broker's or  
2 salesman's certificate shall apply to the commission. Said  
3 application shall be on blanks prepared and furnished by  
4 the said commission and the applications shall be accom-  
5 panied by the registration fee of \$3.00.

The application shall also be accompanied by the affidavit  
2 of two citizens, stating in said affidavit that they are citi-  
3 zens and freeholders, that they are not related to the appli-  
4 cant, and have owned real estate for a period of one year  
5 in the county in which said applicant resides or has his  
6 place of business and shall state that the applicant bears a  
7 good reputation for honesty, truthfulness, fair dealing and  
8 competency, and recommending that a license be granted to  
9 the applicant.

Every applicant for a broker's certificate shall state the  
2 name of the person, firm, partnership, co-partnership, asso-  
3 ciation or corporation with which he will be associated in  
4 the business of real estate, and the location of the place, or  
5 places, for which said certificate is desired, and set forth  
6 the period of time engaged in the real estate business, and if  
7 license has been refused or revoked in this or in any other  
8 state, and shall be properly sworn to before a notary public  
9 or other officer duly authorized to administer oaths.



Every applicant for a certificate shall furnish a sworn  
 2 statement setting forth his present address, both of busi-  
 3 ness and residence, a complete list of all former places  
 4 where he may have resided or been engaged in business  
 5 during the last five years, and the length of such residence,  
 6 together with the name and address of at least one real  
 7 estate owner in each of said counties where he may have  
 8 resided or have been engaged in business.

Every applicant for a salesman's certificate shall, in addi-  
 2 tion to the requirements of this section, also set forth the  
 3 period of time engaged in the real estate business, stating  
 4 the name and address of his last employer and the employer  
 5 into whose service he is about to enter.

A non-resident of this state may become a real estate brok-  
 2 er or a real estate salesman by conforming to all of the  
 3 conditions of this paragraph and act.

In its discretion the commission may recognize in lieu of  
 2 the recommendations and statements required to accom-  
 3 pany an application for certificate, the license issued to a  
 4 non-resident broker or salesman in such other state, upon  
 5 payment of the registration fee and the filing by the appli-  
 6 cant with the commission of a certified copy of applicant's  
 7 license issued by such other state.

(1) Provided that such applicant, if a broker, shall main-  
 2 tain an active place of business in the state by which he is  
 3 originally licensed; and

(2) Provided, further, that every non-resident applicant

2 shall file an irrevocable consent that suits and actions may  
3 be commenced against such applicant in the proper court  
4 of any county or city in this state in which a cause of action  
5 may arise in which the plaintiff may reside, by the service  
6 of any process or pleading authorized by the laws of this  
7 state on the secretary of the commission, said consent stipu-  
8 lating and agreeing that such service of such process or  
9 pleadings on said secretary shall be taken and held in all  
10 courts to be as valid and binding as if due service had been  
11 made upon said applicant in the state of Maine. Said in-  
12 strument containing such consent shall be authenticated by  
13 the seal thereof, if a corporation, or by the acknowledged  
14 signature of a member or officer thereof, if otherwise. All  
15 such applications except from individuals, shall be accom-  
16 panied by the duly certified copy of the resolution of the  
17 proper officers or managing board authorizing the proper  
18 officer to execute the same. In case any process or plead-  
19 ings mentioned in the case are served upon the secretary of  
20 the commission, it shall be by duplicate copies, one of which  
21 shall be filed in the office of the commission and the other  
22 immediately forwarded by registered mail to the main office  
23 of the applicant against which said process or pleadings are  
24 directed.

OBJECTIONS TO GRANTING CERTIFICATE—  
PROCEDURE.

Sect. 4. If no objections to the granting of a certificate  
2 of registration are filed with the commission before same

3 is issued, a certificate shall be granted to the applicant. The  
4 commission may upon receiving a verified complaint against  
5 the issuing of a certificate, or upon its own investigation,  
6 withhold the issuing of the certificate until the applicant  
7 has been served with a copy of the complaint and given an  
8 opportunity to answer said charge or charges. A copy of  
9 the complaint shall within ten days of receipt thereof be  
10 served by the commission upon the applicant personally or  
11 by mailing same by registered mail to the last known busi-  
12 ness address of such applicant and said applicant shall have  
13 thirty days' notice in which to file with the commission reply  
14 to the complaint. If said applicant be a salesman the com-  
15 mission shall also notify the broker employing him, or in  
16 whose employ he is about to enter, of the complaint, by  
17 mailing notice by registered mail to the broker's last known  
18 business address. The commission shall receive and duly  
19 consider any answer, reply or defense, pertinent to the com-  
20 plaint that the applicant interposes; and if upon due con-  
21 sideration the commission shall determine that any appli-  
22 cant is not entitled to a certificate or if the applicant does  
23 not file answer to the complaint within thirty days from  
24 notice the commission shall have the power to refuse to issue  
25 a certificate of registration. The findings of fact made by  
26 the commission acting within its powers shall in the ab-  
27 sence of fraud be conclusive but the circuit courts shall  
28 have the power, provided that application is made by the  
29 aggrieved party within thirty days after such determination

30 to test such findings by mandamus, or by any other method  
31 permissible under the rules and practices of said court, or  
32 the laws of this state and said court may make such further  
33 orders in respect thereto as justice may require.

#### REGISTRATION CERTIFICATE

Sect. 5. When the commission shall deny or any court  
2 suspend or revoke any real estate broker's or salesman's  
3 certificate, the commission shall immediately note upon their  
4 records the action so taken.

When the commission has issued a certificate of registra-  
2 tion it shall be under the seal of the commission and in such  
3 form and size as shall be prescribed by the commission.  
4 This certificate shall show the name and address of the  
5 holder and, if a salesman's certificate, the name of the  
6 broker, owner or lessor by whom employed, and the year  
7 for which granted.

The revocation of a broker's certificate shall also revoke his  
2 or its occupational license and shall automatically suspend  
3 any real estate salesman's certificate of registration and li-  
4 cense granted to any person by virtue of his employment  
5 by said broker pending a change of employment and the  
6 issuance of a new certificate. Such new certificate shall be  
7 issued without charge if granted during the same year in  
8 which the original certificate was granted.

#### COUNTY TAX COLLECTORS TO ISSUE OCCUPA- TIONAL LICENSE

Sect. 6. The certificate of registration provided for in

2 this act shall be exhibited to the county tax collector of the  
3 resident county of the applicant, who is hereby authorized  
4 and shall grant an occupational license only upon the ex-  
5 hibition of said certificate and upon the payment by the  
6 applicant to the county tax collector of the license fee herein  
7 provided for each fiscal year beginning October first.

DESIGNATED BROKER—EXPIRATION OF CERTIFI-  
CATE AND LICENSE—RENEWAL OF LICENSE.

Sect. 7. When a real estate broker's certificate is granted  
2 to any co-partnership, association or corporation, this shall  
3 entitle it to designate one of its members or officers who  
4 shall be authorized thereby, to perform all the acts of a  
5 real estate broker without the payment of any further occu-  
6 pational license or registration fee, if he at the same time  
7 files a formal application with supporting affidavits as to  
8 good character as hereinbefore prescribed and such designa-  
9 tion as a personal representative of the brokerage co-part-  
10 nership, association or corporation, shall be written across  
11 the face of this certificate issued to the person so designated.

If in any case the person so designated by the broker, or  
2 in case such person ceases to be connected with such broker,  
3 said broker shall have the right to designate another person  
4 who shall make application as in the first instance.

Every certificate of registration and license shall expire on  
2 the 30th day of September of each year. Before any real  
3 estate broker or salesman shall have a new certificate issued  
4 to them for the ensuing year, he shall file with the commis-

5 sion application for certificate, but not accompanied by affi-  
6 davits and recommendations, together with a registration  
7 fee which shall be the same as the issuance of the original  
8 certificate.

The various county tax collectors of the state, upon the  
2 presentation of said renewal certificate, shall grant and  
3 deliver an occupational license upon the payment of a fee  
4 hereinbefore provided, as in case of original occupational  
5 license issued.

#### BROKERS MUST MAINTAIN PLACE OF BUSINESS— SIGN—NOTICE

Sect. 8. Every real estate broker shall maintain a place  
2 of business in the state and shall erect and maintain a sign  
3 with the name of the licensee in a conspicuous place at the  
4 entrance to his or its office on the premises to indicate that  
5 he or it is a licensed real estate broker. The size and form  
6 of such sign shall be prescribed by the commission. If  
7 the real estate broker maintains more than one place of busi-  
8 ness in this state a certificate of registration shall be issued  
9 by the commission for each branch office upon the payment  
10 by the applicant of the prescribed broker's registration fee.  
11 Notice in writing shall be given to the commission by each  
12 licensee of any change of principal business location, or if  
13 salesman, of change of employer, without notification to the  
14 commission shall automatically cancel the certificate and  
15 license theretobefore issued. Upon request of the commis-

16 sion any broker, owner or lessor shall furnish a full and  
17 correct list of salesmen employed.

SUSPENSION OR REVOCATION OF CERTIFICATE  
AND LICENSE FOR CAUSES ENUMERATED—COM-  
PLAINTS AND COUNTY JUDGE'S JURISDICTION.

Sect. 9. Any broker or salesman to whom a registration  
2 certificate has been issued and a license granted shall be  
3 subject to have both revoked or suspended, but not until  
4 after due hearing before a county judge, or upon conviction  
5 for a violation of this act.

The acts for which any broker or salesman shall be sub-  
2 ject to have certificate and license revoked or suspended  
3 are: Where he has by false or fraudulent representation  
4 obtained a certificate and license to do business, or where  
5 a broker or salesman in performing or attempting to per-  
6 form any of the acts herein designated, to wit:

(a) Making any substantial misrepresentation with ref-  
2 erence to a transaction injurious to a seller or purchaser  
3 wherein he acts as agent.

(b) Making any false promises of a character such as  
2 to influence, persuade or induce seller or purchaser to their  
3 injury or damage.

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

(d) Acting for more than one party in a transaction  
2 without the knowledge of all parties for whom he acts, or

(e) Accepting a commission or valuable consideration  
2 as a real estate salesman for the performance of any of  
3 the acts specified in this act, from any person, except his  
4 employer, who must be a licensed real estate broker, or own-  
5 er or lessor.

(f) 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

(g) Failing, within a reasonable time, to account for or  
2 to remit any moneys coming into his possession which be-  
3 long to others, or

(h) Being unworthy or incompetent to act as a real es-  
2 tate broker or salesman in such a manner as to safeguard  
3 the interest of the public, or

(i) Paying a commission or valuable consideration to any  
2 person for acts or service performed in violation of this act,  
or

(j) Any other conduct, whether of the same or a dif-  
2 ferent character from that hereinbefore specified, which  
3 constitutes improper, fraudulent or dishonest dealing.

Any unlawful act or violation of any of the provisions  
2 of this act by any real estate salesman, employee or part-  
3 ner or associate of a licensed real estate broker, shall not  
4 be cause for the revocation of a license of any real estate  
5 broker, partial or otherwise, unless it shall appear that  
6 said employer, partner or associate had guilty knowledge  
7 thereof.



Upon a verified complaint against any real estate broker  
2 or salesman after careful investigation by the commission  
3 before whom all complaints against real estate brokers and  
4 salesmen must be filed, the commission may, if the facts  
5 warrant it, request a date for hearing of said complaints,  
6 before the county judge shall set the date for hearing, not  
7 less than 15 days, nor more than 30 days from the date of  
8 filing such request with the said judge, and the commission  
9 shall serve notice on the person, broker, or salesman against  
10 whom the complaints have been filed in writing not less  
11 than 10 days before the date of hearing, and shall afford  
12 such person an opportunity to be heard in person or by  
13 counsel in reference thereto. Such written notice may be  
14 served by delivery of same personally to the person against  
15 whom complaints are made, or by mailing same by reg-  
16 istered mail to his or its last known business address.

At such hearing the judge shall upon the written request  
2 of either party summon witnesses and receive such evi-  
3 dence from the person against whom complaints are made  
4 and the party filing the complaint, and from the documen-  
5 tary evidences and witnesses that may be presented, and  
6 if upon hearing the county judge shall determine that the  
7 broker or salesman against whom the complaint has been  
8 made is guilty of violation of any of the above provisions  
9 or any of those defined in this act, the judge shall suspend  
10 or revoke any certificate and license issued under the pro-  
11 visions hereof. Otherwise, he shall dismiss the complaint.

The county judges of the state of Florida be, and they  
2 are empowered to suspend or revoke any certificate and  
3 license issued under this act after hearing above provided  
4 and they are hereby empowered and they shall collect a fee  
5 of five dollars per diem, for each case; which compensation  
6 shall be in addition to all other compensation allowed county  
7 judges by any of the laws of the state of Maine to be paid  
8 out of the "Real Estate Commission Fund."

UNLAWFUL TO PUBLISH FALSE STATEMENTS OR  
REPRESENTATIONS, ETC.

Sect. 10. Every officer, agent or employee of any com-  
2 pany and every other person who knowingly authorizes, di-  
3 rects or aids in the publication, advertising, distribution, or  
4 circulation of any false written statement or representation  
5 concerning any land or subdivision thereof offered for sale,  
6 and every person who with knowledge that any advertise-  
7 ment, pamphlet, representation or letter concerning any  
8 said land or subdivision contains any written statement that  
9 is false or fraudulent, issues, circulates, publishes or dis-  
10 tributes the same, or shall cause the same to be issued, pub-  
11 lished, or distributed, or who, in any other respect wilfully  
12 violates or fails to comply with any of the provisions of  
13 this act, shall be punished by fine or imprisonment or both,  
14 as hereinafter provided.

UNLAWFUL TO OPERATE WITHOUT REGISTRATION  
CERTIFICATE AND LICENSE—EVERY ACTIVE  
MEMBER OF FIRM MUST HAVE BROKER'S  
LICENSE—EXCEPTION

Sect. 11. That hereafter it shall be unlawful for any person, co-partnership, association or corporation to act as real estate broker, or real estate salesman or to advertise as such without first obtaining a real estate broker's certificate and occupational license as required by law.

No firm, co-partnership, association or corporation shall be granted a certificate or license unless every member or officer thereof who actively engages in its brokerage business shall obtain a certificate or registration and an occupational license as a real estate broker, provided, however, that the person designated by the firm, co-partnership, association or corporation as provided in this act, shall not be required to pay any other fees, if he qualifies as to filing application and certificate of good character, as hereinbefore provided. Every employee who acts as a salesman shall hold a certificate and license as provided herein.

PENALTIES

Sect. 12. Any person, co-partnership, association, or corporation violating any of the provisions of this act, shall upon conviction thereof, if a person, be punished by a fine of not more than five hundred (\$500.00) dollars, or by imprisonment for a term not to exceed six (6) months or by both such fine and imprisonment, in the discretion of the

7 court, and if a corporation, be punished by a fine of not  
8 more than one thousand (\$1,000.00) dollars. Any officer  
9 or agent of a corporation or member or agent of a co-  
10 partnership or association who shall personally participate  
11 in or be accessory to any violation of this act by such co-  
12 partnership, association or corporation, shall be subject to  
13 the penalties herein prescribed for individuals. Any con-  
14 viction shall automatically revoke the license of the person,  
15 co-partnership, association or corporation convicted.

Any court having jurisdiction to try criminal offenses un-  
2 der the constitution and laws of this state, shall have juris-  
3 diction and full power to try any violation of this act.

It shall be the duty of the county solicitor or prosecuting  
2 attorney in and for each county, or in the absence of either  
3 the state attorney, to prosecute all violations as provided  
4 herein.

#### SAVING CLAUSE

Sect. 13. Any portion or portions of this act which may  
2 be declared invalid shall not affect the validity of the re-  
3 maining portions thereof.