

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND ELEVENTH LEGISLATURE

FIRST REGULAR SESSION
December 1, 1982 to June 24, 1983
Chapters 1-452

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH
IN ACCORDANCE WITH MAINE REVISED STATUTES
ANNOTATED, TITLE 3, SECTION 164, SUBSECTION 6.

J.S. McCarthy Co., Inc.
Augusta, Maine
1983

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

and

FIRST SPECIAL SESSION

of the

ONE HUNDRED AND ELEVENTH LEGISLATURE

1983

As seen as When a person has registered registers, the registrar shall ask him whether he wishes to enroll. If his answer is in the affirmative, the registrar shall provide him with an enrollment cause the person to complete the enrollment portion of the application.

Effective September 23, 1983.

CHAPTER 170

H.P. 311 - L.D. 370

AN ACT Relating to the Posting of
Performance Bonds for Rezoning.

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

30 MRSA §4962, sub-§1, ¶G, as enacted by PL 1971, c. 455, §2, is amended to read:

G. When Any zoning ordinance may provide that when a person petitions for rezoning of an area for the purpose of development in accordance with an architect's plan, the area shall not be rezoned unless the petitioner posts a performance bond equal to at least 25% of the estimated cost of the development. Said The bond shall become payable to the municipality, if the petitioner fails to begin construction in a substantial manner and in accordance with the plan within one year of the effective date of the rezoning.

Effective September 23, 1983.

CHAPTER 171

H.P. 681 - L.D. 837

AN ACT to Improve the Operation of the
Maine Real Estate Commission.

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

Sec. 1. 4 MRSA §1151, sub-§2, as amended by PL 1981, c. 698, §5, is further amended to read:

2. Licensing jurisdiction. Except as provided in Title 5, section 10004~~7~~; Title 29, chapter 17; Title 32, chapter 59; and Title 35, section 13-A, the Administrative Court shall have exclusive jurisdiction upon complaint of an agency or, if the licensing agency fails or refuses to act within a reasonable time, upon complaint of the Attorney General, to revoke or suspend licenses issued by the agency, and shall have original jurisdiction upon complaint of a licensing agency to determine whether renewal or reissuance of a license of that agency may be refused.

Notwithstanding any other provisions of law, no licensing agency shall have the authority to reinstate or otherwise affect a license suspended, revoked or modified by the Administrative Court pursuant to a complaint filed by the Attorney General, without the approval of the Attorney General.

Sec. 2. 4 MRSA §1151, sub-§2-A, is enacted to read:

2-A. Appellate jurisdiction. Pursuant to Title 32, section 4056, subsection 2, the Administrative Court shall have exclusive jurisdiction to hear appeals from disciplinary decisions of the Real Estate Commission. The Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII, shall govern this procedure as far as applicable, substituting "Administrative Court" for "Superior Court."

Sec. 3. 5 MRSA §10051, sub-§1, as amended by PL 1981, c. 698, §13, is further amended to read:

1. Jurisdiction. Except as provided in section 10004~~7~~; Title 29, chapter 17; Title 32, chapter 59; and Title 35, section 13-A, the Administrative Court shall have exclusive jurisdiction upon complaint of any agency or, if the licensing agency fails or refuses to act within a reasonable time, upon complaint of the Attorney General to revoke or suspend licenses issued by ~~such~~ the agency and shall have original jurisdiction upon complaint of an agency to determine whether renewal or reissuance of a license of that agency may be refused.

Sec. 4. 5 MRSA §10051, sub-§3 is enacted to read:

3. Appellate jurisdiction. Pursuant to Title 32, section 4056, subsection 2, the Administrative Court shall have exclusive jurisdiction to hear appeals from disciplinary decisions of the Real Estate Commission. The Maine Administrative Procedure Act, chapter 375, subchapter VII, shall govern

this procedure as far as applicable, substituting "Administrative Court" for "Superior Court."

Sec. 5. 32 MRSA §4005, as amended by PL 1975, c. 767, §49, is further amended to read:

§4005. Penalties

Any real estate broker or real estate salesman licensed as such real estate broker or real estate salesman in accordance with this chapter, who fails to renew his, her or its license biennially and continues to act as a real estate broker or real estate salesman, shall be punished by a fine of not less than ~~\$25~~ \$100 nor more than ~~\$100~~ \$400. Any person or corporation violating any other provision of this chapter shall upon conviction thereof, if a natural person, be punished by a fine of not more than ~~\$500~~ \$1,000, plus the amount of compensation received in the subject transaction, or by imprisonment for not more than 6 months, or by both; and, if a corporation, be punished by a fine of not more than ~~\$1,000~~ \$2,000, plus the amount of compensation received in the subject transaction. Any officer or agent of a corporation, or member or agent of a partnership or association, who shall personally participate in or be accessory to any violation of this chapter by such partnership, association or corporation, shall be subject to the penalties prescribed for individuals. Any court of competent jurisdiction shall have full power to try any violation of this chapter, and upon conviction, the court may at its discretion revoke, or suspend, the license of the person, partnership, association or corporation so convicted. All fines and penalties over and above the cost of court proceedings shall inure to the commission. A violation of this chapter shall include performing or attempting to perform those acts which constitute prohibited practices under section 4056.

Sec. 6. 32 MRSA §4051-A, as amended by PL 1981, c. 359, §8, is repealed and the following enacted in its place:

§4051-A. Real Estate Commission; organization

1. Real Estate Commission created. There is created the Real Estate Commission, hereinafter referred to as the "commission." The commission shall consist of 4 industry members and one public member, as provided in this section.

2. Qualifications. Each industry member of the commission shall have been a real estate broker or salesman by vocation in this State for at least 5

years prior to appointment. The public member shall have had no professional or financial connection with the real estate business.

3. Geographic distribution. There shall at no time be more than one member of the commission from any one county.

4. Term; removal. Terms of the members of the commission shall be for 3 years. No person may be appointed for more than 2 consecutive 3-year terms. A vacancy occurring prior to the expiration of a term shall be filled by an appointment for the unexpired term. Members may be removed by the Governor for cause.

5. Quorum; procedure. A majority of the members of the commission constitutes a quorum for the transaction of business under this chapter. The commission shall establish guidelines, policies and rules by which it shall carry out the duties prescribed by this chapter.

6. Appointments. The members of the commission shall be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over business legislation and to confirmation by the Senate. As a part of the appointment, the Governor shall specify whether the appointment is for a vacancy occurring prior to the expiration of a term, in which case the appointment shall be only for the remainder of the unexpired term.

7. Chairman. The commission shall annually elect a chairman from its members.

Sec. 7. 32 MRSA §4051-C is enacted to read:

§4051-C. Director

1. Appointment. The Commissioner of Business Regulation, with the advice of the Real Estate Commission and subject to the Personnel Law, shall appoint a director of the commission.

2. Duties. The director is responsible for management of the commission's affairs, within the guidelines, policies and rules established by the commission, and for carrying out any duties allocated to the director under this chapter. Except as otherwise provided, duties of the director may be performed by the director's designee, other than a member of the commission.

Sec. 8. 32 MRSA §4056, sub-§1, as amended by PL 1981, c. 359, §10, is repealed and the following enacted in its place:

1. Investigations. The director, upon receipt of a verified written complaint or in accordance with guidelines and policies prescribed by the commission, shall investigate the actions of any real estate licensee or any person who assumes to act in the capacity of a licensee. Upon completion of the investigation, the director shall take one of the following actions, and give notice to all interested parties of the action and of their rights to further pursue the matter:

A. Dismiss the complaint;

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

C. File the complaint or charge, subject to further action at a later time if required in the public interest;

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

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

Sec. 9. 32 MRSA §4056, sub-§2, as repealed and replaced by PL 1977, c. 365, is repealed and the following enacted in its place:

2. Commission action. In the case of an alleged violation of this chapter, the commission shall hold a hearing as follows.

A. The commission shall hold a hearing on a staff complaint, or if the director has elected to dismiss, file or not pursue a matter, on petition of a party aggrieved by the director's decision. An aggrieved party shall have 10 days from receipt of notice of the director's decision in which to file the petition with the commission.

B. The director may act as an advocate at a hearing, presenting evidence and argument in support of a staff complaint or other staff decision.

C. Notice of a hearing shall be given to all

interested parties at least 10 days prior to the date on which the hearing is set.

D. The commission shall adopt rules governing the conduct of hearings. The rules shall include provisions governing communications between the members of the commission and the director and staff, in order to assure that members are not prejudiced in a case through ex parte communications with the director and staff. These rules shall not be construed to prohibit communications between members of the commission and the director and staff with regard to matters other than the merits of a case pending hearing before the commission.

E. In the discharge of the duties imposed by this chapter, the commission may administer oaths and affirmations, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with the administration of this chapter. Whenever a person refuses to obey a subpoena duly issued by the commission, the Superior Court for Kennebec County or any court of this State within the jurisdiction of which the person resides or transacts business shall have jurisdiction to issue to that person an order requiring him to comply with the subpoena, and any failure to obey that order may be punished by the court as contempt. Refusal to obey a commission subpoena constitutes a violation of this chapter.

F. If the commission, after a hearing, finds that a violation of this chapter has occurred, it shall:

(1) Report its findings and recommendations to the Attorney General or district attorney for prosecution;

(2) If it finds that there are mitigating circumstances, reprimand the person;

(3) Assess the violator a fine of no more than \$500 for each violation;

(4) Except for violations under subsection 5, suspend the violator's license for up to 60 days; or

(5) Require the person to comply with such terms and conditions as it determines are

necessary to correct or prevent the basis of the violation.

G. Appeals from decisions of the commission shall be to the Administrative Court. Appeals shall be based on questions of law. The procedure for appeals under this section shall be as provided in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII, except that, for purposes of this section, all references to the Superior Court shall be construed as references to the Administrative Court. Further appeal shall be directly to the Law Court.

Sec. 10. 32 MRSA §4058, as amended by PL 1975, c. 767, §60, is repealed.

Sec. 11. 32 MRSA §4103, as amended by PL 1981, c. 76, §2, is repealed and the following enacted in its place:

§4103. Application for real estate broker's license or salesman's license

An applicant for a real estate broker's license or salesman's license shall submit to the commission the following:

1. Application. A properly completed application in writing upon blanks prepared or furnished by the commission;

2. Evidence of qualifications. Written evidence, verified by oath, that the applicant:

A. Is 18 years of age or older;

B. Is a resident of this State, qualified to vote in municipal and state elections prior to his application, except this paragraph shall not apply when the applicant is a nonresident of this State qualifying under section 4002;

C. Has not had an application rejected in this State or any other state within 6 months prior to the date of the application;

D. Has not had a real estate license revoked in this State or any other state within 2 years prior to the date of the application; and

E. Except. in the case of a person who has held any license from the commission prior to December 31, 1963, has a high school education or its equivalent approved by the commission;

3. Sworn statement. A sworn statement setting forth:

A. The applicant's present address of his business and residence, and a complete list of all former places where the applicant may have resided and been engaged in business for a period of 60 days or more during the last 2 years, together with the name and address of one real estate owner in each of those places; and

B. A statement of whether the applicant has been convicted of a criminal offense, other than a violation of the fish and wildlife laws, motor vehicle traffic laws or municipal ordinances where the fine imposed does not exceed \$50, and, if so, what offense;

4. Recommendations. The recommendation of at least 3 citizens, not related to the applicant, who have owned real estate for a period of no less than one year in the county in which the applicant resides or has a place of business, and who acknowledge before a notary public that:

A. They have known the applicant for a period of at least the 6 months immediately prior to the date of the application;

B. The applicant bears a good reputation of honesty, trustfulness, fair dealing and competency; and

C. They recommend that a license be granted to the applicant;

5. Other information. Such other information as is required by this chapter or which the commission, with due regard to the paramount interests of the public, deems desirable to prove the honesty, truthfulness, integrity, reputation and competency of the applicant; and

6. Fee. Payment for the fee prescribed by section 4107.

Sec. 12. 32 MRSA §4104, as amended by PL 1975, c. 767, §70, is repealed and the following enacted in its place:

§4104. Additional application requirements for broker's license

In addition to the application materials required by section 4103, an applicant for a real estate bro-

ker's license shall submit to the commission the following:

1. Associates. The name of the person, firm, partnership, association or corporation with which the applicant will be associated in the business of real estate;

2. Location. The location of the place or places for which the license is desired;

3. Experience. The period of time, if any, during which the applicant has been engaged in the real estate business; and

4. Education. Except in the case of a person who has held any license from the commission prior to December 31, 1963, and except as provided in section 4002, evidence that the applicant has satisfactorily completed an educational course in the field of real estate approved by the commission or has been employed as a licensed salesman full time for at least a year.

Sec. 13. 32 MRSA §4105, as amended by PL 1967, c. 359, §§3 and 4, is repealed and the following enacted in its place:

§4105. Additional application requirements for salesman's license

In addition to the application materials required by section 4103, an applicant for a real estate salesman license shall submit to the commission the following:

1. Associates. The name and address of the applicant's last employer and the name and place of business of the person, firm, partnership, association or corporation then employing the applicant or into whose service the applicant is about to enter;

2. Experience. The period of time, if any, during which the applicant has been engaged in the real estate business; and

3. Broker's recommendation. A written statement by the broker, into whose service the applicant is about to enter, stating that, in the broker's opinion, the applicant is honest, truthful and of good reputation and recommending that the license be granted to the applicant.

Sec. 14. 32 MRSA §4106, as amended by PL 1975, c. 767, §71, is repealed and the following enacted in its place:

§4106. Additional application requirements for associations, partnerships and corporations

In addition to the application materials required elsewhere in this chapter, an association, partnership or corporation applying for a license to conduct the business of a real estate broker shall submit to the commission the following;

1. Associations and partnerships. Where the applicant is an association or partnership, a sworn statement containing:

A. The name and address of each member thereof; and

B. A statement whether any member thereof has been convicted of a crime specified in section 4103, subsection 3, paragraph B, and, if so, the member's name and the offense;

2. Corporations. Where the applicant is a corporation, a sworn statement containing:

A. The name and address of each officer and director thereof; and

B. A statement whether any officer or director has been convicted of a crime specified in section 4103, subsection 3, paragraph B, and, if so, the person's name and the offense; and

3. Designated broker. Where the applicant is an association, partnership or corporation, a designation of one of its officers, who is licensed by the commission as a real estate broker, as its designated broker.

Sec. 15. 32 MRSA §4107, sub-§3 is enacted to read:

3. Conversion. A real estate salesman who applies and qualifies for a real estate broker license shall receive a real estate broker license for any unexpired period remaining on the salesman's license without charge.

Sec. 16. 32 MRSA 4107-A, as repealed and replaced by PL 1979, c. 693, §3, is repealed.

Sec. 17. 32 MRSA §4108 is repealed and the following enacted in its place:

§4108. Denial of license or renewal

1. Grounds for denial. An application for a real estate broker's license or salesman's license or renewal may be denied for any of the following reasons:

A. The applicant fails to submit to the commission any materials, statements or fees required by this chapter, including the requirements of section 4115-C;

B. The applicant fails to submit satisfactory proof to the commission that he is trustworthy and competent to transact the business of real estate broker or salesman in such manner as to safeguard the interests of the public;

C. The applicant makes a material misrepresentation in applications or related materials to the commission;

D. Subject to Title 5, chapter 341, the commission determines that the applicant's conviction of a crime disqualifies him for the license; or

E. If the applicant is required under section 4110 to submit to a written examination, and he fails to achieve a passing score on the examination.

2. Additional grounds for denial; association, partnership or corporation. In addition to the grounds specified in subsection 1, a license or renewal may be denied to an association, partnership or corporation for any of the following reasons:

A. None of the principal officers holds a current real estate broker license; or

B. Any employee, member or officer of the association, partnership or corporation, who acts as a real estate broker or salesman, is not licensed by the commission as a real estate broker or salesman.

3. Powers and duties of the director. If it appears to the director that grounds for the denial of a license or renewal exist under this section, the director shall promptly notify the applicant and:

A. If the basis for denial is that the application materials are incomplete, as described in subsection 1, paragraph A, notify the applicant:

(1) Of the materials needed to complete the application;

(2) That the application will be held for 30 days pending completion by the applicant;

(3) That if the materials are not received at the commission by the end of this period, the license or renewal may be denied by the director; and

(4) Of the applicant's right to a hearing before the commission pursuant to section 4109, if requested within the 30-day period;

B. If the basis for the denial is that the applicant has failed an examination required for the license, notify the applicant;

C. If the basis for the denial is that the applicant is an association, partnership or corporation failing to meet the requirements of subsection 2, notify the applicant:

(1) That the license or renewal is being denied, together with the reason for the denial; and

(2) Of the applicant's right to a hearing before the commission pursuant to section 4109, if requested within 30 days of the notice; or

D. If it appears to the director that some other basis for denial of the license or renewal exists, notify the applicant:

(1) Of the possible basis for denial; and

(2) That a hearing before the commission pursuant to section 4109 will be held to determine what action will be taken.

Sec. 18. 32 MRSA §4109 is repealed and the following enacted in its place:

§4109. Hearing on denial of license or renewal

1. Application. A hearing shall be held pursuant to this section if:

A. Pursuant to section 4108, subsection 3, paragraph A, B or C, the applicant requests a hearing; or

B. Pursuant to section 4108, subsection 3, para-

graph D, such a hearing is required.

2. Director. The director shall seek to protect the interests of the public and the industry in assuring the trustworthiness, competence and qualifications of applicants for licenses and renewals. In this capacity, the director may serve as an advocate in hearings under this section, presenting evidence and argument in support of a recommended disposition.

3. Notice. Notice of a hearing shall be given to the applicant at least 10 days prior to the date on which the hearing is set.

4. Procedure; rules; subpoenas. The provisions of section 4056, subsection 2, paragraphs D and E, and rules promulgated in accordance therewith, shall apply equally to hearings held under this section.

5. Disposition. After hearing, the commission may:

A. Affirm, modify or reverse a decision of the director to deny a license or renewal;

B. Issue, deny or refuse to issue a license or renewal; or

C. In the case of an application for renewal, in its discretion, file a complaint in the Administrative Court, pursuant to Title 4, chapter 25, and Title 5, section 10051, to determine whether renewal of the license may be denied.

Sec. 19. 32 MRSA §4110, last ¶, as repealed and replaced by PL 1979, c. 693, §4, is repealed.

Sec. 20. 32 MRSA §4111, as amended by PL 1975, c. 767, §73, is repealed.

Sec. 21. 32 MRSA §4112, as amended by PL 1975, c. 767, §74, is further amended to read:

§4112. Contents; display

The ~~commission~~ director shall issue to each licensee a license in ~~such the~~ form and size as shall be prescribed by the commission. Each license shall have imprinted thereon the seal of the commission and in addition shall contain such matter as shall be prescribed by the commission. The license of each real estate salesman shall be delivered or mailed to the real estate broker by whom such real estate salesman is employed and shall be kept in the custody and control of such broker. It shall be the duty of each real estate broker to display conspicuously his

license and the licenses of all his salesmen in his place of business.

Sec. 22. 32 MRSA §4113, as repealed and replaced by PL 1977, c. 682, §10, is amended to read:

§4113. Pocket cards

The ~~commission~~ director may prepare and deliver to each licensee a pocket card, which among other things 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 of the real estate broker by whom he is employed.

Sec. 23. 32 MRSA §4115-B, 4th ¶, as amended by PL 1981, c. 707, §3, is further amended to read:

The ~~commission~~ director shall collect the prescribed application fee. The ~~commission~~ may promulgate rules necessary for implementation and enforcement of this section and shall maintain a current list of programs receiving approval under this section.

Sec. 24. Transition clause. All appointments heretofore made by the persons referred to in this Act shall continue in force and effect on the effective date of this Act. The provisions of section 6 regarding qualifications, term and appointments of commissioners shall apply to all appointments and reappointments made after the effective date of this Act.

Effective September 23, 1983.

CHAPTER 172

H.P. 762 - L.D. 993

**AN ACT to Increase the Compensation
Benefits for Employees Formerly Working
for a Bankrupt Employer.**

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

26 MRSA §632, sub-§1, as amended by PL 1981, c. 168, §§24 and 26, is further amended to read: