

MAINE STATE LEGISLATURE

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THE MICHIE COMPANY, Inc.
CHARLOTTESVILLE, VIRGINIA

Chapter 84.

Registration of Real Estate Brokers and Salesmen.

Sec. 1. Maine real estate commission; powers; duties; compensation.—The Maine real estate commission, as heretofore established and hereinafter in this chapter called the “commission,” shall consist of 3 persons appointed by the governor, each of whom shall be a resident of the state and who, immediately prior to the date of his appointment, shall have been a resident of the state for 5 years and whose vocation for a period of at least 10 years shall have been that of a real estate broker or a real estate salesman. Upon the expiration of the term of office of any member, his successor shall be appointed for a term of 3 years and until his successor is appointed and qualified. There shall at no time be more than one commissioner from any one county. Members to fill vacancies shall be appointed for the unexpired term. The commission immediately upon the qualification of the member appointed in each year shall organize by selecting from its members a chairman, and may do all things necessary and convenient for carrying into effect the provisions of this chapter, and may from time to time promulgate necessary rules and regulations.

Each member of the commission shall receive as full compensation for each day actually spent on the work of said commission the sum of \$10 and his actual and necessary expenses incurred in the performance of duties pertaining to his office.

The commission may employ a secretary and such clerks and assistants as it deems necessary to discharge the duties imposed by the provisions of this chapter, and shall outline their duties and fix their compensation, subject to the provisions of the personnel law.

The commission shall adopt a seal with such design as the commission may prescribe engraved thereon, by which it shall authenticate its proceedings. Copies of all records and papers in the office of the commission, duly certified and authenticated by the seal of said commission, shall be received in evidence in all courts equally and with like effect as the original. All records kept in the office of the commission under authority of this chapter shall be open to public inspection under such rules and regulations as shall be prescribed by the commission.

The fees collected under the provisions of this chapter shall be paid forthwith by the commission to the treasurer of state with a detailed statement thereof and shall constitute a fund to be known as the “Real Estate Fund.” Said fund shall be kept as a separate account by said treasurer of state and he shall pay therefrom, upon vouchers signed by the chairman of the commission and approved by the state controller, the cost and expenses of administering the provisions of this chapter. All of the costs and expenditures of the commission shall be paid only from said fund and in no event shall any payments for the expenses of the commission exceed the amount received by said treasurer from said commission. Any moneys remaining in the real estate fund at the end of the fiscal year shall be carried forward to the credit of the said fund for the succeeding year. (R. S. c. 75, § 1.)

Sec. 2. Definitions and exceptions. — As used in this chapter, the following words and phrases shall have the following meanings:

I. A “real estate broker” is any person, firm, partnership, association or corporation who for a compensation or valuable consideration sells or offers for sale, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, or who leases or offers to lease, or rents or offers for rent, any real estate or the improvements thereon for others, as a whole or partial vocation.

II. “Real estate” shall include leaseholds and other interests in real estate less than leaseholds.

III. A "real estate salesman" is any person who for a compensation or valuable consideration is employed either directly or indirectly by a real estate broker to sell or offer to sell, or to buy or offer to buy, or to negotiate the purchase or sale or exchange of real estate, or to lease, to rent or offer for rent any real estate, or to negotiate leases thereof, or of the improvements thereon, as a whole or partial vocation.

IV. "Commission" shall mean the Maine real estate commission.

A single transaction for a compensation or valuable consideration, of buying or selling real estate of or for another, or offering for another to buy, or sell, or exchange real estate, or leasing, or renting, or offering to rent real estate, except as herein specifically excepted, shall constitute the person, firm, partnership, association or corporation performing, offering or attempting to perform any of the acts enumerated herein, a real estate broker or real estate salesman within the meaning of this chapter.

The provisions of this chapter shall not apply to any person, partnership, association or corporation who as owner or lessor shall perform any of the acts aforesaid with reference to property owned or leased by said owner or lessor or to the regular employees thereof with respect to the property so owned or leased, where such acts are performed in the regular course of, or as an incident to the management of such property and the investment therein, nor shall the provisions of this chapter apply to persons acting as attorney in fact under a duly executed power of attorney from the owner in proper form for record, authorizing the final consummation by performance of any contract for the sale, leasing or exchange of real estate, nor shall this chapter be construed to include in any way the services rendered by an attorney at law in the performance of his duties as such attorney at law; nor shall it be held to include, while acting as such, a receiver, trustee in bankruptcy, administrator or executor or any person selling real estate under order of any court, nor to include a trustee acting under a trust agreement, deed of trust, or will or the regular salaried employees thereof. (R. S. c. 75, § 2.)

Quoted in part in *Gerstian v. Tibbetts*,
142 Me. 215, 49 A. (2d) 227.

Sec. 3. License required.—It shall be unlawful for any person, partnership, association or corporation to act as a real estate broker or real estate salesman, or to advertise or assume to act as such real estate broker or real estate salesman, without a license issued by the commission.

No partnership, association or corporation shall be granted a license unless every member or officer of such partnership, association or corporation who actively participates in the brokerage business of such partnership, association or corporation shall hold a license as a real estate broker or salesman and unless every employee who acts as a salesman for such partnership, association or corporation shall hold a license as a real estate salesman. (R. S. c. 75, § 3.)

Sec. 4. Qualifications for license. — Brokers' licenses shall be granted only to persons who are 21 years of age or over. Licenses shall be granted only to persons who are trustworthy and competent to transact the business of a real estate broker or real estate salesman in such manner as to safeguard the interests of the public, and only after satisfactory proof has been presented to the commission. The applicant must be a person whose application has not been rejected in this or any other state within 6 months prior to date of application, or whose real estate license has not been revoked in this or any other state within 2 years prior to date of application. Prior conviction for embezzlement or obtaining money by false pretense shall be, among others, sufficient grounds for denying a license. (R. S. c. 75, § 4. 1947, c. 196.)

Sec. 5. Application for license.—Every applicant for a real estate broker's license shall apply therefor in writing upon blanks prepared or furnished by the commission.

Such application shall be accompanied by the recommendation of at least 3 citizens, not related to the applicant, who have known the applicant for a period of 3 years and who have owned real estate for a period of 1 year or more in the county in which said applicant resides or has his place of business. The recommendation shall certify that the applicant bears a good reputation for honesty, truthfulness, fair dealing and competency and recommend that a license be granted to the applicant. If applicant cannot procure such recommendations for the reason that he has not resided within the county for a period of 3 years, he may furnish similar recommendations from 3 persons with like qualifications from any county where the applicant has resided within the 3 years prior to the filing of his application. The commission, with due regard to the paramount interests of the public, may require such other proof as shall be deemed desirable as to the honesty, truthfulness, integrity, reputation and competency of the applicant.

Every applicant for a broker's license shall state the name of the person, firm, partnership, association or corporation with which he will be associated in the business of real estate, and the location of the place or places for which said license is desired, and set forth the period of time, if any, which said applicant has been engaged in the real estate business.

Every applicant for a broker's or a salesman's license shall furnish a sworn statement, setting forth his present address, both of business and residence, a complete list of all former places where he 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 1 real estate owner in each of said places where he may have resided or been engaged in business. If the applicant be a partnership or an association, the name and address of each member thereof shall be stated. If the applicant be a corporation, the name and address of each officer and director thereof shall be stated. The applicant shall also state whether he has been convicted of a criminal offense involving moral turpitude, and if so, what offense; if the applicant be a partnership or association, whether any member thereof has been so convicted; if the applicant be a corporation, whether any officer or director has been so convicted.

Every applicant for a salesman's license shall, in addition to the above requirements, also set forth the period of time during which he has been engaged in the real estate business, stating the name and address of his last employer and the name and the place of business of the person, firm, partnership, association or corporation then employing him or into whose service he is about to enter. The application shall be accompanied by a written statement by the broker into whose service he is about to enter, stating that in his opinion the applicant is honest, truthful and of good reputation and recommending that the license be granted to the applicant.

Every application for a license under the provisions of this chapter shall be accompanied by the license fee herein prescribed. In the event that the commission does not issue the license, the fee shall be returned to the applicant.

The commission is expressly vested with the power and authority to make and enforce any and all such reasonable rules and regulations connected with the application for any license as shall be deemed necessary to administer and enforce the provisions of this chapter.

The commission is authorized to require every applicant for a first-time broker's license or a first-time salesman's license to appear in person at such time and place as the commission shall designate for that purpose, for a personal written or oral examination as to his qualifications to act as a broker or salesman, and the commission shall collect a fee of \$10 for such examination, which fee will entitle any applicant for a license to 1 retake examination, without additional charge, should the applicant fail to pass the first examination. The examination fee, provided herein, shall be in addition to any other fees authorized by this chapter. (R. S. c. 75, § 5, 1949, c. 112.)

Sec. 6. Procedure when license refused. — The commission, after an application in proper form has been filed, shall, before refusing to issue a license, set the application down for a hearing and determination as provided in section 9. (R. S. c. 75, § 6.)

Sec. 7. Details relating to license, fees, etc. — The commission shall issue to each licensee a license in such form and size as shall be prescribed by the commission. This license shall show the name and address of the licensee, and in case of a real estate salesman's license, shall show the name of the real estate broker by whom he is employed. Each license shall have imprinted thereon the seal of the commission and in addition to the foregoing 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 in his place of business.

The commission shall prepare and deliver to each licensee a pocket card, which card among other things shall contain an imprint of the seal of the commission and 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 also contain the name and address of his employer. The matter to be printed on such pocket card, except as herein set forth, shall be prescribed by the commission.

The original fee for each real estate broker's license shall be \$10 and the annual renewal fee shall be \$5. The original fee for each real estate salesman's license shall be \$5 and the annual renewal fee shall be \$2; provided that when a partnership, association or corporation shall have paid an original fee of \$10 or a renewal fee of \$5 and shall have designated one of its members or officers as a real estate broker, as hereinafter provided in this section, the fees payable by any other member or officer actively engaged in the real estate business of such partnership, association or corporation shall be \$5 for the first registration fee and \$2 for the renewal fee, for which a salesman's license shall be issued; but any such member or officer shall be entitled to a broker's license upon the payment of the usual fee therefor.

Each real estate broker's license which may be granted to an individual shall entitle such individual to perform all of the acts contemplated by this chapter. When the real estate broker's license is granted to any partnership or association consisting of more than one person, or to any corporation, this shall entitle the partnership, association or corporation to designate one of its members or officers, who upon compliance with the terms of this chapter shall, without payment of any further fee upon issuance of said broker's license, be entitled to perform all of the acts of the real estate broker contemplated by this chapter. If, in any case, the person so designated by a real estate broker shall be refused a license by the commission, or in case such person ceases to be connected with such real estate broker, said broker shall have the right to designate another person who shall make application as in the first instance.

Every license shall expire on the 30th day of June of each year. The commission shall issue a new license for each ensuing year in the absence of any reason or condition which might warrant the refusal of the granting of a license, upon receipt of the written request of the applicant and the annual fee therefor as herein required. The revocation of a broker's license shall automatically suspend every real estate salesman's license granted to any person by virtue of his employment by the broker whose license has been revoked, pending a change of employer and the issuance of a new license. Such new license shall be issued without charge if granted during the same year in which the original license was granted.

No person, partnership or corporation engaged in the business or acting in

the capacity of a real estate broker or a real estate salesman within this state shall bring or maintain any action in the courts of this state for the collection of compensation for any services performed as a real estate broker or real estate salesman without alleging and proving that such person, partnership or corporation was a duly licensed real estate broker or real estate salesman at the time the alleged cause of action arose.

Every resident real estate broker shall maintain a place of business in this state. If the real estate broker maintains more than 1 place of business within the state, a duplicate license shall be issued to such broker for each branch office maintained and a fee of \$1 shall be paid for each duplicate license.

Notice in writing shall be given to the commission by each licensee of any change of principal business location, whereupon the commission shall issue a new license for the unexpired period without charge. The change of business location without notification to the commission shall automatically cancel the license theretofore issued.

When any real estate salesman shall be discharged or shall terminate his employment with the real estate broker by whom he is employed, it shall be the duty of such real estate broker to immediately deliver or mail by registered mail to the commission such real estate salesman's license. The real estate broker shall, at the time of mailing such real estate salesman's license to the commission, address a communication to the last known residence address of such real estate salesman, which communication shall advise such real estate salesman that his license has been delivered or mailed to the commission. A copy of such communication to the real estate salesman shall accompany the license when mailed or delivered to the commission. It shall be unlawful for any real estate salesman to perform any of the acts contemplated by this chapter, either directly or indirectly, under authority of said license from and after the date of receipt of said communication advising him that his license has been delivered or mailed to the commission. Prompt notice in writing within 10 days shall be given to the commission by any real estate salesman of a change of employer, and of the name of the new employer into whose service such salesman is about to enter or has entered, and a new license shall thereupon be issued by the commission to such salesman for the unexpired term of the original license; provided that such new employer shall be a duly licensed real estate broker. The salesman shall pay a transfer fee of \$1 for such new license; provided that another license shall not be issued to such real estate salesman until he shall return his former pocket card to the commission or shall satisfactorily account to it for the same; provided further, that not more than 1 license shall be issued to any real estate salesman for the same period of time. (R. S. c. 75, § 7.)

Allegation and proof of due licensing are jurisdictional requirements.—In an action to recover a real estate broker's commission for the sale of real estate, the jurisdiction of the court depends upon both allegation and proof that the broker was duly licensed at the time the cause of action arose. *Gerstian v. Tibbetts*, 142 Me. 215, 49 A. (2d) 215; *Bartlett v. Chisholm*, 146 Me. 206, 79 A. (2d) 167.

Under and by virtue of this section, the plaintiff cannot recover in an action seeking payment of a real estate commission in the absence of an allegation that he was a duly licensed real estate broker at the time the alleged cause of action arose. Said allegation required by statute must appear of record to perfect jurisdiction. *Bartlett v. Chisholm*, 147 Me. 265, 86 A. (2d) 166.

But such defect in original declaration may be cured by amendment.—The omission to state in the original declaration that the plaintiff was a duly licensed broker, as required by statute, is not such a jurisdictional defect that it cannot be cured by amendment, for if a court has jurisdiction of the subject matter, it may allow an amendment to perfect the jurisdiction on the record. *Mansfield v. Goodhue*, 142 Me. 380, 53 A. (2d) 264.

Requirements of this section cannot be waived.—Neither the parties nor the court can waive the provisions of this section which define and limit the plaintiff's right to bring and maintain his action for broker's commission. *Bartlett v. Chisholm*, 146 Me. 206, 79 A. (2d) 167.

Sec. 8. Suspension or revocation of license.—

I. The commission may, upon its own motion, and shall, upon the verified complaint in writing of any person, provided such complaint or such complaint together with evidence, documentary or otherwise, presented in connection therewith shall make out a prima facie case, investigate the actions of any real estate broker or real estate salesman, or any person who shall assume to act in either such capacity within this state, and shall have the power to suspend or to revoke any license issued under the provisions of this chapter, at any time where the licensee has by false or fraudulent representation obtained a license or where the licensee, in performing or attempting to perform any of the acts mentioned herein, is deemed to be guilty of:

A. Making any substantial misrepresentation; or

B. Making any false promises of a character likely to influence, persuade or induce; or

C. Pursuing a continued and flagrant course of misrepresentation, or making of false promises through agents or salesmen or advertising or otherwise; or

D. Receiving compensation from more than 1 party in a transaction without the knowledge of all parties for whom he acts; or

E. Accepting a commission or valuable consideration as a real estate salesman for the performance of any of the acts specified in this chapter from any person except his employer, who must be a licensed real estate broker; or

F. Representing or attempting to represent a real estate broker other than the employer, without the express knowledge and consent of the employer; or

G. Failing, within a reasonable time, to account for or to remit any moneys coming into his possession which belong to others; or

H. Disregarding or violating any provisions of this chapter; or

I. Misleading and untruthful advertising, with knowledge that such advertising is misleading and untruthful; or

J. Paying or receiving any rebate, profit, compensation or commission in violation of the provisions of this chapter; or

K. Inducing any party to a contract, sale or lease to break such contract for the purpose of substituting in lieu thereof a new contract with the same principal or a different principal, where such substitution is motivated by the personal gain of the licensee; or

L. Forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or other like offense or offenses, and who has been convicted thereof in a court of competent jurisdiction of this or any other state; or

M. Guaranteeing or having authorized or permitted any person to guarantee future profits which may result from the resale of property; or

N. Any act or conduct whether of the same or different character than hereinabove specified, which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealings.

II. The commission shall, in addition, have power to revoke or suspend any license issued under the provisions of this chapter, at any time, where the licensee performs any act or acts, or offers or attempts or agrees to do any act or acts, for which the commission may lawfully refuse to issue a license to any applicant.

III. Any unlawful act or violation of any of the provisions of this chapter by any real estate salesman, employee or partner or associate of a licensed real estate broker shall not be cause for the revocation of a license of such real estate broker, partial or otherwise, unless it shall appear to the satisfaction of the commission that said employer, partner or associate had guilty knowledge thereof. (R. S. c. 75, § 8.)

Sec. 9. Hearing. — The commission shall, before denying an application for license or before suspending or revoking any license, set the matter down for a hearing, and at least 20 days prior to the date set for the hearing it shall notify the applicant or licensee in writing, which said notice shall contain an exact statement of the charges made and the date and place of the hearing. The applicant or licensee at all such hearings shall have the opportunity to be heard in person and by counsel in reference thereto.

Such written notice may be served by delivery of same personally to the applicant or licensee or by mailing same by registered mail to the last known business address of such applicant or licensee. If such applicant or licensee be a salesman, the commission shall also notify the broker employing him or into whose employ he is about to enter, by mailing notice by registered mail to the broker's last known business address. The hearing on such charges shall be at such time and place as the commission shall prescribe.

In the preparation and conduct of such hearing the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of papers. Any member of the commission may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence.

In case of disobedience to a subpoena, any member of the commission may invoke the aid of any court of competent jurisdiction in requiring the attendance and testimony of witnesses and the production of papers; and such court may issue an order requiring the person to appear before the commission and give evidence or to produce papers as the case may be; and any failure to obey such order of the court may be punished by the court as a contempt thereof.

Testimony may be taken by deposition as in civil cases, and any person may be compelled to appear and testify in the same manner as witnesses may be compelled to appear and testify as hereinbefore provided.

If the commission shall determine that any applicant is not qualified to receive a license, a license shall not be granted to such applicant, and if the commission shall determine that any licensee is guilty of a violation of any of the provisions of this chapter, the license shall be suspended or revoked. The commission, upon request of the applicant or licensee, shall furnish said applicant or licensee with a definite statement of its findings of facts and its reason or reasons for refusing to grant the license or for suspension of the rights of the licensee or for the revocation of the license, as the case may be. The findings of fact made by the commission acting within its powers shall be conclusive, but the supreme court shall have the power to review questions of law involved in any final decision or determination of the commission; provided that an application is made by the aggrieved party within 30 days after such determination by certiorari, mandamus or by any other method permissible under the rules and practices of said court or the laws of this state, and said court may make such further orders in respect thereto as justice may require. (R. S. c. 75, § 9.)

Sec. 10. Nonresident brokers and salesmen. — A nonresident of this state may become a real estate broker or a real estate salesman by conforming to all of the conditions of this section and this chapter.

In its discretion the commission may accept, in lieu of the recommendations and statements required under the provisions of section 5 to accompany an application for license, the license issued to a nonresident broker or salesman in another state, upon payment of the license fee and the filing by the applicant with

the commission of a certified copy of the applicant's license issued by such other state. A nonresident applicant, if a broker, shall maintain an active place of business in the state in which he is located; and every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county of this state in which a cause of action may arise or in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this state on the secretary of the commission, said consent stipulating and agreeing that such service of such process or pleadings on said secretary shall be taken and held in all courts to be as valid and binding as if due service had been made upon said applicant personally within this state. Said instrument containing such consent shall be authenticated by the seal thereof, if a corporation, or by the acknowledged signature of a member or officer thereof, if otherwise. All such applications, except from individuals, shall be accompanied by the duly certified copy of the resolution of the proper officers or managing board authorizing the proper officer to execute the same. In case any process or pleadings mentioned in the case are served upon the secretary of the commission, it shall be by duplicate copies, one of which shall be filed in the office of the commission and the other immediately forwarded by registered mail to the main office of the applicant against which said process or pleadings are directed. (R. S. c. 75, § 10.)

Sec. 11. Publication of list of licensees.—The commission shall annually publish a list of the names and addresses of all licensees licensed by it under the provisions of this chapter and of all persons whose licenses have been suspended or revoked within 1 year; together with such other information relative to the enforcement of the provisions of this chapter as it may deem of interest to the public. Such lists shall be mailed by the commission to any person in this state upon request. (R. S. c. 75, § 11.)

Sec. 12. Penalties.—Any real estate broker or real estate salesman licensed as such real estate broker or real estate salesman in accordance with the provisions of this chapter, who fails to renew his, her or its license annually as hereinbefore provided and continues to act as a real estate broker or real estate salesman, shall be punished by a fine of not less than \$10 nor more than \$25. 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 or by imprisonment for a term of not more than 6 months, or by both such fine and imprisonment; and if a corporation, be punished by a fine of not more than \$1,000. 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 the provisions of this chapter by such partnership, association or corporation, shall be subject to the penalties herein prescribed for individuals. Any court of competent jurisdiction shall have full power to try any violation of the provisions of this chapter, and upon conviction, the court may at its discretion revoke 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. (R. S. c. 75, § 12.)

Sec. 13. Sharing commissions with unlicensed persons. — It shall be unlawful for any licensed broker or salesman to offer, promise, allow, give or pay, directly or indirectly, any part or share of his commission or compensation arising or accruing from any real estate transaction to any person who is not a licensed broker or salesman, or a person acting in a capacity which exempts him under the provisions of section 2, in consideration of services performed or to be performed by such unlicensed person; and no real estate salesman shall be employed by, or accept compensation from, any person other than the broker under whom he is at the time licensed, and it shall be unlawful for any licensed

real estate salesman to pay a commission to any person except through the broker under whom he is at the time licensed. A licensed broker, however, may share his commission with a nonresident broker, even though the latter is not licensed in his own state or in this state, provided such nonresident broker is doing business regularly and legally within his own state. (R. S. c. 75, § 13.)