

MAINE STATE LEGISLATURE

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**Report
Of the Commissioner of the Department of Professional and
Financial Regulation**

**To the Joint Standing Committee on Business, Research and
Economic Development**

Sunrise Review of LD 1525, Sec. 28

“An Act to Amend Real Estate Brokerage Laws”

Commercial Leasing Brokerage

January 15, 2006

John Elias Baldacci
Governor

Christine A. Bruenn
Commissioner

I. Introduction

The State of Maine currently regulates real estate brokerage practices through the Maine Real Estate Commission which is authorized to administer and enforce licensing and brokerage laws. Public Law 2005, chapter 378, enacted by the 122nd Legislature, requires the Commissioner of the Department of Professional and Financial Regulation to conduct an independent assessment (“sunrise review”) of the need to expand the current real estate brokerage scope of practice to include commercial leasing.

II. Sunrise Review

Pursuant to 5 MRSA § 12015(3), “sunrise review” is required of any legislation that proposes to regulate professions not previously regulated, or that proposes to expand existing regulation. Sunrise review is a systematic review of proposed new or expanded regulation undertaken to ensure that the purpose of the regulation is to protect the health, safety, and welfare of the public.

The sunrise review process consists of applying the evaluation criteria established by statute, 32 MRSA § 60-J, to the proposed system of regulation to determine whether the occupation or profession should be regulated, or whether current regulation should be expanded.

Under the law, the sunrise review process may be conducted in one of three ways:

1. The Joint Standing Committee of the Legislature considering the proposed legislation may hold a public hearing to accept information addressing the evaluation criteria;
2. The Committee may request the Commissioner of Professional and Financial Regulation to conduct an independent assessment of the applicant’s answers to the evaluation criteria and report those findings back to the Committee; or
3. The Committee may request that the Commissioner establish a technical review committee to assess the applicant’s answers and report its finding to the Commissioner.

Copies of 5 MRSA § 12015(3) and a summary of the Sunrise Review process are included in Appendix A.

III. Charge from Legislature

Public Law 2005, chapter 378, enacted by the 122nd Legislature requires the Commissioner of the Department of Professional and Financial Regulation to conduct an independent assessment (“sunrise review”) of the proposed expansion of the current scope of practice of real estate brokerage to include leasing of any nonresidential property that does not include any residential component. This report documents the independent assessment pursuant to 32 MRSA § 60-K.

IV. Independent Assessment by Commissioner

The requirements for an independent assessment by the Commissioner are set forth in 32 MRSA § 60-K. The Commissioner is required to apply the specified evaluation criteria set forth in 32 MRSA § 60-J to all answers and information submitted to, or collected by, the Commissioner. After conducting the independent assessment, the Commissioner must submit a report to the Committee setting forth recommendations, including any draft legislation necessary to implement the report’s recommendations.

The Commissioner’s report to the Joint Standing Committee on Business, Research and Economic Development must contain an assessment as to whether final answers to the evaluation criteria are sufficient to support some form of regulation. In addition, if there is sufficient justification for some form of regulation, the report must recommend an agency of State government to be responsible for the regulation and the level of regulation to be assigned to the applicant group. Finally, the report must reflect the least restrictive method of regulation consistent with the public interest.

V. Evaluation Criteria

As part of the independent assessment process, the Commissioner must review the responses to the evaluation criteria submitted by the applicant group and interested parties. In this instance, the Maine Association of Realtors (“MAR”) and the Maine Commercial Association of Realtors® (“MCAR”) combined are considered the “applicant group.” Although the Department sent sunrise surveys to the Maine Association of REALTORS®, the Maine Chamber of Commerce, and the Maine Apartment Owners & Managers Association, only the Maine Association of Realtors and the Maine Commercial Association of REALTORS® submitted survey responses. Both Associations support requiring commercial leasing brokers to be licensed by the State, however, they would not require property managers or attorneys to become licensed as commercial leasing brokers even though they may engage in commercial leasing.

The Department’s analysis tracks the evaluation criteria set forth in 32 MRSA § 60-J, and is presented in this report as follows:

1. The evaluation criteria, as set forth in the statute;
2. A summary of the responses received from the applicant group and interested parties; and

3. The Department's independent assessment of the response to the evaluation criteria.

Evaluation Criterion #1: Data on group proposed for regulation. A description of the professional or occupational group proposed for regulation or expansion of regulation, including the number of individuals or business entities that would be subject to expanded regulation; the names and addresses of associations, organizations and other groups representing the practitioners; and an estimate of the number of practitioners in each group.

Responses:

Both MAR and MCAR note that the current membership of each association would potentially be affected by a legislative decision to expand the definition of real estate brokerage to include commercial leasing. MAR reports having 5,048 members, all of whom are involved in the sale of real property and MCAR reports a total of 120 business members, all of whom are engaged in commercial leasing activity. Both associations note that the Maine Real Estate Commission currently licenses approximately 9,000 individuals and brokerage companies.

Department assessment:

Current real estate brokerage law permits any individual with or without a real estate license to engage in commercial leasing activity. Although an expansion of the scope of practice of real estate brokerage to include commercial leasing would appear to have little or no impact on the current membership of the associations and on the licensee pool of the Real Estate Commission as a whole, the impact of such a change on individuals who may engage in commercial leasing today but who are not licensed by the Real Estate Commission would be significant. Unlicensed commercial leasing agents would be required to meet all state licensing requirements to obtain a real estate brokerage license in order to continue their commercial leasing activity. Clearly, the burden resulting from the expansion of the current scope of practice will fall heavily on those whose commercial leasing activities have not required state licensing and oversight. The interested parties did not provide any information on the potential number of individuals and or businesses in this category.

Evaluation Criterion #2: Specialized skill. Whether practice of the profession or occupation proposed for expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met.

Responses:

The applicant groups assert that commercial leasing requires specialized skills and education because the transactions at issue involve complex financial questions and require knowledge of market conditions and market lease rates.

Department assessment:

The applicants' submission does not specify the types of educational courses and/or training that would be appropriate to prepare someone for a career in commercial leasing. Real estate brokerage courses currently required as prerequisites to licensure by the Real Estate Commission focus on residential brokerage. It is not clear what courses might be appropriate for commercial leasing activity. Moreover, it is not clear whether those courses are currently available in Maine.

Evaluation Criterion #3: Public health; safety; welfare. The nature and extent of potential harm to the public if the profession or occupation is not regulated, the extent to which there is a threat to the public's health, safety or welfare and production of evidence of potential harm, including a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years.

Responses:

The applicant groups set forth three bases for expanding the scope of real estate brokerage to include commercial leasing. First, the value of commercial leases is often higher than the value of real estate sales. Thus, if the conveyance of real estate is regulated, then commercial leasing activity should likewise be regulated. Second, the applicant groups note that 45 other states require a license to engage in commercial leasing activity. Third, the lack of regulation of commercial leasing in Maine places Maine commercial landlords and tenants at risk.

Department Assessment:

Sunrise review is typically triggered when an organized group of unregulated individuals petitions the Legislature for a new licensing program. Under those circumstances, evidence of consumer complaints against individuals within the unlicensed profession that relate to the quality of service to the public is an important factor to be taken into account when the Legislature evaluates the public need for a new or expanded licensure program. In the context of this sunrise review to evaluate the public need for protection through regulation of commercial leasing, no information about complaints against individuals engaged in commercial leasing for incompetent or unskilled services within the past five years was submitted by the applicant groups.

The Department notes that commercial leasing has engendered a significant body of Maine contract law that provides commercial landlords and tenants with appropriate remedies for breach of contract, insurance issues related to leased property and damages. See, generally, Rodriguez v. Tomes, 610 A.2d 262 (1992); Handy Boat, Inc. v. Professional Services, Inc., 1997 Me Superior Ct., CA Doc. No. CV-432; Daigle

Commercial Group, Inc. v. Raymond St. Laurent v. J.P. Maloney Auction Co., Inc., 1999 ME 107 (1999).

Evaluation Criterion #4: Voluntary and past regulatory efforts. A description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public.

Responses:

MAR and MCAR provided information about various professional certifications available to commercial leasing agents available through professional organizations, including Certified Commercial Investment Member (“CCIM”) and the Society of Industrial and Office REALTORS (“SIOR”), both of which offer designations and seminars in the practice of commercial leasing. The applicants also note that only a small number of Maine licensed real estate agents have obtained these certifications; the seminars are based on national practices rather than on the local Maine market, and that additional education and regulation is needed to protect the public from untrained commercial leasing agents.

Department Assessment:

Aside from the assertion that commercial leasing agents should be required to obtain an educational grounding in commercial leasing concepts, no specific information on the kinds of educational courses and opportunities that would prepare a commercial leasing agent for the profession was provided. Further, it does not appear that such courses are currently available in Maine at this time. In the absence of existing commercial leasing courses, the Real Estate Commission would be required to contract with a consultant to research and develop courses. This approach, of course, would result in significant additional cost to the Commission. The Department notes, however, that the Maine Commercial Association of Realtors is in an advantageous position to provide an enhanced level of training and educational opportunities for its member organizations as an alternative to state regulation of commercial leasing brokers.

Evaluation Criterion #5. Costs and benefits of regulation. The extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers.

Responses:

Both applicant groups assert that the costs of regulating and licensing commercial leasing brokers would be minimal, given that the Real Estate Commission is already established for the purpose of regulating real estate brokerage. Further, both groups opine that

regardless of the amount of the costs, the benefit of regulation to the public would greatly outweigh those costs. The benefits to the public would be the same as the benefit to the public of licensing and regulating real estate brokers in Maine.

Both groups explain that commission fees flowing from lease agreements are already charged to the consumer and are dictated by competition between commercial brokerages. The applicants explain further that under current Maine law, *“out-of-state brokers are coming into Maine and brokering transactions without using Maine brokers. It is counterproductive for the State of Maine to allow money and business to leave the state of Maine, especially at a time when money is so tight. Also, how much of the taxes on the out-of-state Broker commissions actually go to the Maine government? Regulating this practice should provide additional business and revenue to Maine.”*

Department Assessment:

Neither MAR nor MCAR provided information on the relative numbers of out-of-state commercial leasing brokers doing business in Maine. However, it is apparent that an important by-product of regulating commercial leasing agents to the applicant groups would be to increase the amount of commissions received by in-state commercial leasing agents, many of whom presumably already hold a real estate brokerage license. Although increasing commissions flowing to Maine licensed real estate brokers is a valid business objective, it is a weak basis for imposing new state licensing requirements on a group of individuals.

Evaluation Criterion #6: Service availability under regulation. The extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public.

Responses:

MAR and MCAR both state that imposing license requirements on commercial leasing brokers will increase the amount and quality of services available in the state. *“Maine consumers will obtain representation from Maine licensed brokers who will have local knowledge and expertise of the Maine market.”*

Moreover, licensing requirements will increase Maine broker representation, which will provide additional revenue and jobs for the State of Maine. *“When clients are represented by brokers in Maine, our own state’s businesses stand a much better chance to be located within Maine properties. How many out-of-state brokers know of Pat’s Pizza or other Maine chains? Why should Maine businesses be put at the bottom of the list for Maine properties? ...”*

Department Assessment:

Typically, the state imposition of licensing requirements results in a decrease in available services for which a license is required. In this situation, however, imposition of

licensing requirements on commercial leasing agents may have only negligible impact on Maine citizens. Rather, the proposed licensing requirements, if imposed, would have the effect of deterring out of state commercial leasing brokers from doing business in Maine, thus, funneling new commissions to Maine licensed real estate brokers who also engage in commercial leasing brokerage.

Again, although increasing commissions to Maine licensees in this profession may be a valid business goal, approaches other than state licensing are available to achieve that goal. The sole purpose of an occupational and professional regulatory board is to protect the public health and welfare of Maine citizens.¹ State intervention through licensure should be reserved only for those situations in which the public does not possess the skills or information to make informed decisions to select a service provider without an indication that minimum licensure requirements have been met. Imposing licensing requirements for any other purpose would have the impact of diminishing the significance of the State's responsibility to safeguard the safety and welfare of the public. In our view, erecting barriers to practice in a particular profession for economic reasons in the name of public protection may not be an appropriate use of the State's police power nor is it a sound public policy approach.

Evaluation Criterion #7: Existing laws and regulations. The extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from non-regulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.

Responses:

None submitted.

Department Assessment:

Commercial lease agreements are contracts developed through negotiations between and among parties to the agreement. Commercial and residential leases are governed by common law contract principles as well as by Title 14 of Maine Revised Statutes § 6001 et. seq. The terms of these agreements are subject to interpretation by the parties and the courts.² Disputes between the parties that arise out of these contracts are resolved in the context of the judicial system. The Department is aware of no information that indicates that the judicial system is not the appropriate arbiter of commercial lease agreement disputes. Moreover, the Real Estate Commission has no record of having received any written or anecdotal information suggesting that contract disputes arising from

¹ 10 MRSA § 8008 provides, “*The sole purpose of an occupational and professional regulatory board is to protect the public health and welfare. A board carries out this purpose by ensuring that the public is served by competent and honest practitioners and by establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners of those regulated professions. Other goals or objectives may not supersede this purpose.*”

² Commercial leases and commercial landlord and tenant issues are governed by 14 MRSA § 6017.

commercial leases should be resolved in a different forum. Clearly, the potential harm to the parties to a commercial lease is economic in nature. Claims for financial damages are properly resolved in the judicial setting.

Evaluation Criterion #8: Method of regulation. Why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate.

Responses:

Both applicant groups make reference to the current regulation of real estate brokerage by the Maine Real Estate Commission and the similarity of issues and skill sets between real estate brokers and commercial leasing brokers for the proposition that the appropriate level of regulation is to expand the current statutory authority of the Real Estate Commission. Thus, the Commission could regulate the activities of commercial leasing activities in the same manner as it regulates real estate brokerage activities. In addition, the groups infer that the regulatory costs attributable to regulation of commercial leasing could be assimilated into the current fee structure of the Commission.

Department Assessment:

Any discussion of the appropriateness of one method of regulation over another would be premature at this time given that the proponents have not demonstrated a clear need for public protection. The Real Estate Commission was established by the Legislature out of a concern that ordinary citizens making what, for most people, would be the largest financial purchase -- a home -- would be at risk without the skills and financial information provided by real estate brokers. The Commission's current regulatory process provides that public protection. Since commercial leases are contracts between knowledgeable business people, less governmental protection is necessary because knowledgeable business people should be able to negotiate the terms of a lease to their respective satisfaction and resolve disputes through mediation or litigation.

Evaluation Criterion #9: Other states. Please provide a list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis.

Responses:

The applicants provided information indicating that 45 states and the District of Columbia currently require a license to conduct commercial leasing activity. The applicants attached a sampling of the laws of other states that regulate commercial leasing through licensure.

Department Assessment:

There are various reasons why some states impose regulation on a profession or occupation and other states do not. The evolution of professional and occupational licensure in a particular state is largely a matter of the public's experience with a particular profession. The fact that many states license commercial leasing brokers is one, but not the most persuasive indicator of the public's need for protection in the absence of regulation.

Evaluation Criterion #10: Previous efforts to regulate. Please provide the details of any previous efforts in this State to implement regulation of the profession or occupation.

Responses:

The applicant groups submitted information indicating that in 1944, Maine real estate brokerage law defined "real estate broker" as "*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.*" (Emphasis added.) The applicants also note that the phrase "who leases or offers to lease, or rents or offers for rent" was deleted from the statute in 1988 when the real estate brokerage sections of Title 32 were recodified.

Department Assessment:

The Department confirms that the change described by the applicant groups did occur.

Evaluation Criterion #11: Mandated benefits. Please indicate whether the profession or occupation plans to apply for mandated benefits.

Responses:

The applicant groups responded in the negative.

Evaluation Criterion #12: Minimal competence. Please describe whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.

Responses:

The applicant groups responded that licensing standards for commercial leasing representatives requiring compliance with standards of ethics and fiduciary responsibility would not exceed the standards to which real estate brokers are held.

Department Assessment:

Statement noted.

Evaluation Criterion #13: Financial analysis. Please describe the method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

Responses:

The applicant groups state that the funding of an expansion of the regulatory program of the Real Estate Commission “*will be addressed through additional licensing fees and fees for education.*”

Department assessment:

Given that educational courses and opportunities would need to be developed and approved, it would be premature to discuss how an expansion of regulation would be funded. Currently, state law requires that all licensing programs within the Department of Professional and Financial Regulation must be funded entirely from dedicated licensing fees.

VI. Considerations and Conclusions of the Commissioner

State sunrise review law requires the Commissioner to engage in a two-step evaluation process guided by 13 evaluation criteria. First, the Commissioner must evaluate the information provided by the applicant group in support of its proposal to regulate or expand regulation of a profession. Second, the Commissioner must recommend whether the Committee should take action on a proposal. If the Commissioner’s recommendation supports regulation or expansion, the report must include any legislation required to implement that recommendation. The recommendation must reflect the least restrictive method of regulation consistent with the public interest.

The purpose of the sunrise process with respect to licensing of commercial leasing brokers is to assess the public need for new regulation and the consequences to the public and the regulated community of the creation of a new regulatory program or the expansion of an existing regulatory program.

The following factors have been considered in formulating the Department’s recommendations:

1. The absence of information that the public is in jeopardy because commercial leasing brokers are not required to obtain a state license;

2 The absence of information with respect to the estimated number of individuals and businesses that would be required to obtain a license to engage in commercial lease brokerage services if those services required a state license;

3 The absence of documented complaints against individuals or businesses who have harmed Maine citizens because of the quality of their commercial leasing services; and

4. Information indicating that the Maine Legislature narrowed the definition of real estate brokerage in 1988 to exclude rental and leasing activities.

Having reviewed the material submitted, the Department finds that the applicants have not substantiated the need for public protection through state regulation of commercial leasing brokers. The Department has no information about the number of people and businesses that would be impacted by new licensing requirements. Even if a case had been made by the applicants that the public is placed at risk without regulation of commercial leasing brokers, a decision to impose new licensing requirements without an idea of the numbers of individuals and businesses impacted would not be advisable. At best, the impact would be negligible because most commercial leasing agents are already licensed as real estate brokers. At worst, new licensing requirements imposed on commercial leasing companies currently operating in Maine without state regulation could pose an unjustified burden on those companies. To impose any new license requirements without clear benefit to the public would not be a sound exercise of state authority.

New state regulation would not achieve the applicant groups' stated goal of providing better service without specific information about the skills, education and training needed by commercial leasing brokers. Moreover, the state would need assurance that such educational opportunities are actually available in Maine.

The proponents assert that the Legislature should consider the value of property rights at issue in determining whether to regulate commercial leasing. In regulating real estate sales, the Maine Legislature determined that the conveyance of real estate without state regulation placed the public in jeopardy when purchasing a home and imposed licensing requirements on real estate brokers. The purchase of a home is one of the largest and most critical investments that Maine citizens can make. Although the value of commercial leasing agreements may involve much higher dollar amounts and may involve greater legal complexity than real estate sales, the parties involved are more sophisticated and more able than home buyers to manage the transaction details. The Department is not persuaded that commercial landlords and tenants are at risk without regulation. The parties to commercial leasing agreements currently have adequate legal and contract remedies noted earlier in the report. In the absence of any information indicating that these remedies are not adequate, it would not appear to be a good use of state resources to expand this program.

The applicant groups have identified a financial issue that relates to the business activities of out-of-state commercial leasing brokers. Maine commercial lease brokers feel that they are losing out on commissions that currently accrue to the benefit of out-of-state brokers. Specifically, the applicant groups opine *“out-of-state brokers are coming into Maine and brokering transactions without using Maine brokers. It is counterproductive for the State of Maine to allow money and business to leave the state of Maine, especially at a time when money is so tight. Also, how much of the taxes on the out-of-state Broker commissions actually go to the Maine government? Regulating this practice should provide additional business and revenue to Maine.”* Without taking a position on whether this statement is factual, the Department is of the view that imposing licensing requirements on a category of individuals and businesses for the singular purpose of increasing commissions to commercial leasing brokers who are based in Maine is not an appropriate use of the State’s police power that lies at the heart of state licensure of professions and occupations. There are other options available to the applicant groups to achieve the stated goal.

Finally, the Department notes that in 1986 and 1987 the Real Estate Commission was the subject of what is now referred to as “sunset review.” The legislation that resulted from the review committee’s (Joint Standing Committee on Audit and Program Review) analysis included a narrowing of the focus of the Real Estate Commission to the conveyance of real estate and eliminated, among other language, that part of the definition of real estate brokerage that had referred to the rental or lease of real property.

A review of Real Estate Commission records revealed that prior to the change in the definition of “real estate brokerage” deleting rental and lease references that became effective on January 1, 1988, (PL 1987, c. 395), the Real Estate Commission had received 60 complaints involving leases, rental deposits or property management. Of those 60 complaints, only one case involved commercial property. That complaint, which was ultimately dismissed by the Real Estate Commission, involved a rented store. The complainant alleged misrepresentation of the acceptable uses of the property; plumbing and wiring repairs; and fire insurance coverage. Based on this complaint history and the 1988 recodification of the real estate brokerage laws to exclude lease and rental activities, it does not appear that the public has been placed in jeopardy either before or after the Legislature’s decision to eliminate state regulation of commercial leasing brokerage.

Based on these considerations and the submissions of the applicant groups, the Department concludes that the public health, safety and welfare of Maine citizens is not jeopardized in the absence of state regulation of commercial leasing activity and that reinstatement of state licensure and regulation of commercial leasing brokers is not warranted.



PUBLIC LAWS

First Special Session of the 122nd

CHAPTER 378

H.P. 1072 - L.D. 1525

An Act To Amend the Real Estate Brokerage Laws

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

Sec. 1. 10 MRSA §8003-C, sub-§6 is enacted to read:

6. Unlicensed practice; private cause of action; repeal. In addition to the penalties and remedies provided under this chapter, an affected person may bring an action in District Court to enjoin any person from violating the provisions of subsection 4. For the purposes of this section, "affected person" may include, but is not limited to, a person who has used the services of a person suspected of violating the provisions of subsection 4 or a private association composed primarily of members practicing a profession for which licensure is required pursuant to this chapter.

If an affected person is successful in obtaining a permanent injunction, that person is entitled to the costs of suit and attorney's fees. In any action brought by an affected person against a person for violating the terms of an injunction issued under this subsection, the court may make the necessary orders or judgments to restore to any person who has suffered any ascertainable loss of money or personal or real property or to compel the return of compensation received by reason of such conduct found to be in violation of an injunction.

This subsection is repealed July 1, 2007.

Sec. 2. 32 MRSA §13171, as enacted by PL 1987, c. 395, Pt. A, §212, is amended to read:

§13171. Real estate brokerage agency

~~"Real~~ As used in this chapter, except for subchapter 7, "real estate brokerage agency" or "agency" means any person or entity engaged in real estate brokerage services through its designated broker, associates or employees and licensed by the commission as a real estate brokerage agency.

Sec. 3. 32 MRSA §13177, as amended by PL 1999, c. 129, §8 and affected by §16, is repealed.

Sec. 4. 32 MRSA §13177-A is enacted to read:

§13177-A. Brokerage agreements

1. Definitions. As used in this section, "brokerage agreement," "real estate brokerage agency" and "client" have the same meanings as in section 13271.

2. Written agreements. A brokerage agreement between a real estate brokerage agency and a client

must be in writing and, at a minimum, include the following:

- A. The signature of the client to be charged;
- B. The terms and conditions of the brokerage services to be provided;
- C. The method or amount of compensation to be paid; and
- D. The date upon which the agreement will expire.

A brokerage agreement may not be enforced against any client who in good faith subsequently engages the services of another real estate brokerage agency following the expiration date of the first brokerage agreement. Any brokerage agreement provision extending a real estate brokerage agency's right to a fee following expiration of the brokerage agreement may not extend that right beyond 6 months.

Sec. 5. 32 MRSA §13178, as enacted by PL 1987, c. 395, Pt. A, §212, is amended to read:

§13178. Trust accounts

Every agency shall maintain a ~~trust~~ federally insured account or accounts in a ~~banking institution located in the~~ financial institution authorized to do business in this State, as defined in Title 9-B, section 131, subsection 17-A, or a credit union authorized to do business in this State, as defined in Title 9-B, section 131, subsection 12-A, for the sole purpose of depositing all earnest money deposits and all other money held by it as an agency in which its clients or other persons with whom it is dealing have an interest. The trust account and withdrawal orders, including all checks drawn on the account, ~~shall~~ must name the subject agency and be identified as a real estate trust account. Real estate trust accounts ~~shall~~ must be free from trustee process, except by those persons for whom the brokerage agency has made the deposits and then only to the extent of the interest. The designated broker, except for an amount necessary to maintain the accounts not to exceed an amount prescribed by commission rule, shall withdraw from the accounts all fees due within 30 days after, but not until consummation or termination of the transaction when the designated broker makes or causes to be made a full accounting to ~~his~~ the broker's principal. The designated broker shall maintain, ~~at the agency's place of business, contracts and other necessary records to verify the adequacy and proper use of the accounts~~ trust accounts and supporting records in a manner prescribed by commission rule. These accounts and records ~~shall~~ must be ~~opened~~ open for inspection by the director or ~~his~~ the director's authorized representative at the agency's place of business during generally recognized business hours. Upon order of the director, the designated broker shall authorize the director in writing to confirm the balance of funds held in all agency trust accounts. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 6. 32 MRSA §13184 is enacted to read:

§13184. Real estate brokerage records; retention

A designated broker shall maintain complete and adequate records of all real estate brokerage activity conducted on behalf of the broker's agency. The commission shall specify by rule the records required to establish complete and adequate records, including retention schedules. The records must be open for inspection by the director or the director's authorized representative at the agency's place of business during generally recognized business hours.

Sec. 7. 32 MRSA §13196, sub-§2, ¶¶A, B and C, as enacted by PL 1999, c. 129, §10 and affected by §16, are amended to read:

- A. For those applicants remaining inactive from the issuance of the inactive licenses up to 2 years, ~~15~~ 21 clock hours of continuing education completed within the previous biennium;
- B. For those applicants remaining inactive for more than 2 years but less than 4 years, ~~22~~ 28 clock hours of continuing education completed within the previous biennium; or
- C. For those applicants remaining inactive for more than 4 years but less than 6 years, ~~30~~ 36 clock hours of continuing education completed within the previous biennium.

Sec. 8. 32 MRSA §13197, sub-§1, as amended by PL 1999, c. 129, §11 and affected by §16, is further amended to read:

1. Requirement. As a prerequisite to renewal of a license, applicants must complete ~~15~~ 21 clock hours of continuing education within 2 years prior to the date of application in programs or courses approved by the commission. This requirement does not apply to agency and company licenses.

Sec. 9. 32 MRSA §13199, sub-§2, as amended by PL 1999, c. 129, §12 and affected by §16, is repealed.

Sec. 10. 32 MRSA §13199, sub-§2-A is enacted to read:

2-A. Professional qualifications. An applicant for an associate broker license must have practiced as a real estate sales agent for 2 years within the 5 years immediately preceding the date of application and satisfactorily completed a course of study meeting guidelines established by the commission. The commission may not issue a license under this section until an individual has completed 2 years as a licensed real estate sales agent.

Sec. 11. 32 MRSA §13200, sub-§2, as enacted by PL 1987, c. 395, Pt. A, §212, is amended to read:

2. Professional qualification. Each applicant for a sales agent license ~~shall~~ must meet ~~one of~~ the following qualifications:

- A. The applicant ~~shall~~ must satisfactorily complete a course of study meeting commission established guidelines; ~~and~~
- B. The applicant ~~may~~ must appear at such time and place as the director may designate for the purpose of a written sales agent examination.

Sec. 12. 32 MRSA c. 114, sub-c. 7, as amended, is further amended by repealing the subchapter headnote and enacting the following in its place:

SUBCHAPTER 7

REAL ESTATE BROKERAGE RELATIONSHIPS

Sec. 13. 32 MRSA §13271, as amended by PL 1999, c. 129, §15 and affected by §16, is further amended to read:

§13271. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

- 1. Affiliated licensee.** "Affiliated licensee" means a licensee who is authorized to engage in

brokerage activity by and on behalf of a real estate brokerage agency.

2. Appointed agent. "Appointed agent" means that affiliated licensee who is appointed by the designated broker of the affiliated licensee's real estate brokerage agency to act solely for a client of that real estate brokerage agency to the exclusion of other affiliated licensees of that real estate brokerage agency.

3. Brokerage agreement. "Brokerage agreement" means a contract that establishes the relationships between the parties ~~as to that~~ and the brokerage services to be performed.

4. Buyer agent. "Buyer agent" means a real estate brokerage agency that ~~is engaged by and represents~~ has entered into a written brokerage agreement with the buyer in a real estate transaction to represent the buyer as its client.

5. Client. "Client" means a person who has entered into a written brokerage agreement ~~creating a special agency relationship~~ with a real estate brokerage agency that has agreed to represent that person and be bound by the duties set forth in section 13272 on behalf of that person.

6. Designated broker. "Designated broker" means a ~~licensee~~ broker designated by a real estate brokerage agency to act for ~~it~~ the real estate brokerage agency in the conduct of real estate brokerage.

7. Disclosed dual agent. "Disclosed dual agent" means a real estate brokerage agency representing 2 or more clients whose interests are adverse in the same transaction with the knowledge and informed consent of the clients.

8. Material fact. "Material fact" means a fact that relates to the transaction and is so substantial and important as to influence the ~~parties~~ client to whom it is imparted.

9. Ministerial acts. "Ministerial acts" means those acts that a real estate brokerage agency ~~or its affiliated licensees perform~~ performs for a person who is not a client and that ~~do not require discretion or the exercise of the brokerage agency's or its affiliated licensees' judgment~~ are informative or clerical in nature and do not rise to the level of active representation on behalf of the person.

10. Real estate brokerage agency. "Real estate brokerage agency" means a person or entity providing real estate brokerage services through that person's designated broker, affiliated licensees, associates or employees and licensed by the commission as a real estate brokerage agency.

11. Seller agent. "Seller agent" means a real estate brokerage agency that ~~is engaged by and represents~~ has entered into a written brokerage agreement with the seller in a real estate transaction to represent the seller as the real estate brokerage agency's client.

12. Subagent. "Subagent" means a real estate brokerage agency engaged by another real estate brokerage agency to perform brokerage tasks for a client.

~~**13. Third party.** "Third party" means a person who is not a client and has no agency relationship to the real estate brokerage agency.~~

13-A. Transaction broker. "Transaction broker" means a real estate brokerage agency that provides real estate brokerage services to one or more parties in a real estate transaction without a fiduciary relationship as a buyer agent, a seller agent, a subagent or a disclosed dual agent.

14. Undisclosed dual agent. "Undisclosed dual agent" means a real estate brokerage agency representing 2 or more clients whose interests are adverse in the same transaction without the knowledge and informed consent of the clients.

Sec. 14. 32 MRSA §§13272 to 13274, as enacted by PL 1993, c. 679, §1, are amended to read:

§13272. Scope of agency

A real estate brokerage agency that provides services through a brokerage agreement for a client is bound by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence and accounting as set forth in this chapter. Such ~~an~~ a real estate brokerage agency may be a seller agent, a buyer agent ~~or, a subagent or a disclosed dual agent.~~ ~~If a different relationship between the real estate brokerage agency and the person for whom the real estate brokerage agency performs the services is intended, including a dual agent, it must be described in writing and signed by the parties.~~

§13273. Seller agent

1. Duty to seller. ~~A real estate brokerage agency engaged by a~~ seller agent:

A. Shall perform the terms of the brokerage agreement made with the seller;
B. Shall promote the interests of the seller by exercising agency duties as set forth in section 13272 including:

- (1) Seeking a sale at the price and terms stated in the brokerage agreement or at a price and terms acceptable to the seller except that the ~~licensee~~ seller agent is not obligated to seek additional offers to purchase the property while the property is subject to a contract of sale unless the brokerage agreement so provides;
- (2) Presenting in a timely manner all offers to and from the seller, even when the property is subject to a contract of sale;
- (3) Disclosing to the seller material facts of which the ~~licensee~~ seller agent has actual knowledge or if acting in a reasonable manner should have known concerning the transaction, except as directed in section 13280;
- (4) Advising the seller to obtain expert advice on material matters that are beyond the expertise of the ~~licensee~~ seller agent; and
- (5) Accounting in a timely manner for all money and property received in which the seller has or may have an interest;

C. Shall exercise reasonable skill and care;

D. Shall comply with all requirements of the laws governing real estate commission brokerage licenses and any rules adopted by the commission;

E. Shall comply with any applicable federal, state or local laws, rules, regulations or ordinances related to real estate brokerage including fair housing and civil rights laws or regulations;

F. Has an obligation to preserve confidential information provided by the seller during the course of the relationship that might have a negative impact on the seller's real estate activity unless:

- (1) The seller to whom the information pertains grants consent to disclose the information;
- (2) Disclosure of the information is required by law;
- (3) The information is made public or becomes public by the words or conduct of the seller to whom the information pertains or from a source other than the ~~licensee~~ seller agent; or
- (4) Disclosure is necessary to defend the ~~licensee~~ seller agent against an accusation of

wrongful conduct in a judicial proceeding before the commission or before a professional committee; and

G. Must be able to promote alternative properties not owned by the seller to prospective buyers as well as list competing properties for sale without breaching any duty to the client.

2. Duty to buyer. The duty of a seller agent to a buyer is governed by the following.

A. ~~A real estate brokerage agency engaged by a seller agent~~ shall treat all prospective buyers honestly and may not knowingly give false information and shall disclose in a timely manner to a prospective buyer all material defects pertaining to the physical condition of the property of which the ~~real estate brokerage agency seller agent~~ knew or, acting in a reasonable manner, should have known. A ~~real estate brokerage agency seller agent~~ is not liable to a buyer for providing false information to the buyer if the false information was provided to the ~~real estate brokerage agency seller agent~~ by the ~~real estate brokerage agency's seller client~~ seller agent's client and the ~~real estate brokerage agency seller agent~~ did not know or, acting in a reasonable manner, should not have known that the information was false. A ~~real estate brokerage agency seller agent~~ is not obligated to discover latent defects in the property.

B. Nothing in this subchapter precludes the obligation of a buyer to inspect the physical condition of the property. A cause of action may not arise on behalf of any person against a ~~real estate brokerage agency seller agent~~ for revealing information in compliance with this subchapter.

C. ~~A real estate brokerage agency engaged by a seller in a real estate transaction seller agent~~ may provide assistance to the buyer by performing ministerial acts such as preparing offers and conveying those offers to the seller and providing information and assistance concerning professional services not related to real estate brokerage services. Performing ministerial acts for the buyer may not be construed as violating the ~~real estate brokerage agency's seller agent's~~ agreement with the seller ~~and performing ministerial acts for the buyer may not be construed as or~~ forming a brokerage agreement with the buyer. Performing ministerial acts for the buyer does not make the seller agent a transaction broker for the buyer.

§13274. Buyer agent

1. Duty to buyer. ~~A real estate brokerage agency engaged by a buyer agent:~~

- A. Shall perform the terms of the brokerage agreement made with the buyer;
- B. Shall promote the interests of the buyer by exercising agency duties as set forth in section 13272 including:

- (1) Seeking a property at a price and terms specified by the buyer except that the ~~licensee~~ buyer agent is not obligated to seek other properties for the buyer while the buyer is a party to a contract to purchase that property unless it is provided by the brokerage agreement;
- (2) Presenting in a timely manner all offers to and from the buyer;
- (3) Disclosing to the buyer material facts of which the ~~agency~~ buyer agent has actual knowledge or, if acting in a reasonable manner, should have known concerning the transaction, except as directed in section 13280. Nothing in this subchapter limits any obligation of a buyer to inspect the physical condition of the property;
- (4) Advising the buyer to obtain expert advice on material matters that are beyond the expertise of the ~~agency~~ buyer agent; and
- (5) Accounting in a timely manner for all money and property received in which the buyer has or may have an interest;

C. Shall exercise reasonable skill and care, except that a ~~real estate brokerage agency~~ buyer agent is not obligated to discover latent defects in the property;

D. Shall comply with all requirements of the laws governing real estate commission brokerage licenses and any rules adopted by the commission;

E. Shall comply with any applicable federal, state or local laws, rules, regulations or ordinances related to real estate brokerage including fair housing and civil rights laws or regulations;

F. Has an obligation to preserve confidential information provided by the buyer during the course of the relationship that might have a negative impact on the buyer's real estate activity unless:

- (1) The buyer to whom the information pertains grants consent to disclose the information;
 - (2) Disclosure of the information is required by law;
 - (3) The information is made public or becomes public by the words or conduct of the buyer to whom the information pertains or from a source other than the ~~licensee~~ buyer agent; or
 - (4) Disclosure is necessary to defend the ~~licensee~~ buyer agent against an action of wrongful conduct in a judicial proceeding before the commission or before a professional committee;
- and

G. Must be able to promote other properties in which the buyer is interested to other buyers who might also be clients of the ~~real estate brokerage agency~~ buyer agent without breaching any duty or obligation.

2. Duty to seller. The duty of a buyer agent to a seller is governed by the following.

A. A ~~real estate brokerage agency~~ engaged by a buyer agent shall treat all prospective sellers honestly and may not knowingly give them false information including material facts about the buyer's financial ability to perform the terms of the transaction.

B. A ~~real estate brokerage agency~~ buyer agent is not liable to a seller for providing false information to the seller if the false information was provided to the ~~real estate brokerage agency~~ buyer agent by the ~~real estate brokerage agency's buyer client~~ buyer agent's client and the ~~real estate brokerage agency~~ buyer agent did not know or, acting in a reasonable manner, should not have known that the information was false. A cause of action may not arise on behalf of any person against a ~~real estate brokerage agency~~ buyer agent for revealing information in compliance with this subchapter.

C. A ~~real estate brokerage agency~~ engaged by a buyer agent in a real estate transaction may provide assistance to the seller by performing ministerial acts such as preparing and conveying offers to the buyer and providing information and assistance concerning professional services not related to real estate brokerage services. Performing ministerial acts for the seller may not be construed as violating the ~~real estate brokerage agency's~~ buyer agent's agreement with the buyer and performing ministerial acts for the seller may not be construed as or forming a brokerage agreement with the seller. Performing ministerial acts for the seller does not make the buyer agent a transaction broker for the seller.

Sec. 15. 32 MRSA §13275, sub-§1, ¶C, as enacted by PL 1993, c. 679, §1, is amended to read:

C. A statement that the disclosed dual agent may disclose any information to one party that the disclosed dual agent gains from the other party if that information is relevant to the transaction, except:

- (1) The willingness or ability of the seller to accept less than the asking price;
- (2) The willingness or ability of the buyer to pay more than has been offered;

- (3) Confidential negotiating strategy not disclosed in the sales offer as terms of the sale; and
- (4) The motivation of the seller for selling and the motivation of the buyer for buying;

Sec. 16. 32 MRSA §13275, sub-§2, as enacted by PL 1993, c. 679, §1, is amended to read:

2. Cause of action. A cause of action may not be brought on behalf of any person against a disclosed dual agent for making disclosures permitted or required by this subchapter and the disclosed dual agent does not terminate any ~~real estate brokerage agency~~ client relationship by making disclosures permitted or required by this subchapter.

Sec. 17. 32 MRSA §13275, sub-§4 is enacted to read:

4. Duty to parties. The duty of a disclosed dual agent to the client who is selling is the same as set forth in section 13273, and the duty to the client who is buying is the same as set forth in section 13274, except that:

A. A disclosed dual agent may not promote the interests of one party to the detriment of the other party except as required to comply with this section; and

B. A disclosed dual agent may disclose any information to one party that the disclosed dual agent gains from the other party if that information is relevant to the transaction, except:

- (1) The willingness or ability of the seller to accept less than the asking price;
- (2) The willingness or ability of the buyer to pay more than has been offered;
- (3) Confidential negotiating strategy not disclosed in the sales offer as terms of the sale; and
- (4) The motivation of the seller for selling and the motivation of the buyer for buying.

Sec. 18. 32 MRSA §13277, as enacted by PL 1993, c. 679, §1, is amended to read:

§13277. Written policy

Every real estate brokerage agency shall adopt a written company policy that identifies and describes the types of real estate brokerage ~~agency~~ relationships in which the designated broker and affiliated licensees may engage.

Sec. 19. 32 MRSA §13278, sub-§§2 and 4, as enacted by PL 1993, c. 679, §1, are amended to read:

2. Not a dual agent. A real estate brokerage agency and the designated broker are not considered to be dual agents solely because of an appointment under the provisions of this section, except that any affiliated licensee who personally represents both the seller and the buyer, as clients, in a particular transaction is considered to be a ~~disclosed~~ dual agent and is required to comply with the provisions of this subchapter governing disclosed dual agents.

4. Appointments; roles. Methods of appointment and the role of the real estate brokerage agency and the designated broker must be defined by rules adopted by the commission. The rules must include a requirement that clients be informed as to the real estate brokerage agency's appointed agent policy and give written consent to that policy in advance of entering into a ~~real estate~~ brokerage agreement.

Sec. 20. 32 MRSA §13279, as amended by PL 1999, c. 100, §1, is further amended to read:

§13279. Real estate brokerage relationship disclosure required

A real estate brokerage agency shall provide in a timely manner to buyers and sellers of residential real property a meaningful, written real estate brokerage ~~agency~~ relationship disclosure form as defined and mandated by rules adopted by the commission. For purposes of this section, "residential real property" means real estate consisting of not less than one nor more than 4 residential dwelling units.

Sec. 21. 32 MRSA §13281, sub-§1, as enacted by PL 1993, c. 679, §1, is amended to read:

1. Effective date. The relationships set forth in this subchapter commence on the effective date of the real estate brokerage agency's brokerage agreement and continue until performance, completion, termination or expiration of that brokerage agreement.

Sec. 22. 32 MRSA §13281, sub-§2, ¶B, as enacted by PL 1993, c. 679, §1, is amended to read:

~~B. Treating~~ For seller agents, buyer agents, subagents and disclosed dual agents, treating as confidential information provided by the client during the course of the relationship that could have a negative impact on the client's real estate activity, unless:

- (1) The client to whom the information pertains grants written consent;
- (2) Disclosure of the information is required by law;
- (3) The information is made public or becomes public by the words or conduct of the client to whom the information pertains or from a source other than the real estate brokerage agency or the affiliated licensee; or
- (4) Disclosure is necessary to defend the real estate brokerage agency or an affiliated licensee against an action of wrongful conduct in a judicial proceeding before the commission or before a professional committee.

Sec. 23. 32 MRSA §§13282 and 13283 are enacted to read:

§13282. Presumption

Except as otherwise provided in this subchapter, a real estate brokerage agency providing real estate brokerage services is presumed to be acting as a transaction broker unless the real estate brokerage agency has agreed, in a written brokerage agreement, to represent one or more parties to the real estate transaction as the real estate brokerage agency's clients. Client representation may not be created orally or by implication or be assumed by a real estate brokerage agency or any party to a real estate transaction.

§13283. Transaction broker

1. Not an agent. A transaction broker does not represent any party as a client to a real estate transaction and is not bound by the duties set forth in section 13272.

2. Responsibilities. A transaction broker shall:

- A. Account in a timely manner for all money and property received;
- B. Disclose in a timely manner to a buyer to a transaction all material defects pertaining to the physical condition of the property of which the transaction broker has actual notice or knowledge;
- C. Comply with all requirements of the laws governing real estate commission brokerage licenses

and any rules adopted by the commission;

D. Comply with any applicable federal, state or local laws, rules, regulations or ordinances related to real estate brokerage, including fair housing and civil rights laws or regulations;

E. Treat all parties honestly and may not knowingly give false information; and

F. Perform such ministerial acts as may be agreed upon between the transaction broker and one or more parties to a real estate transaction.

A transaction broker is not liable for providing false information if the false information was provided to the transaction broker and the transaction broker did not know that the information was false. A transaction broker is not obligated to discover latent defects in the property. A cause of action does not arise on behalf of any person against a transaction broker who reveals information or makes disclosures permitted or required by this subchapter.

3. Prohibited acts. A transaction broker may not:

A. Conduct an inspection, investigation or analysis of a property for the benefit of any party;

B. Verify the accuracy or completeness of oral or written statements made by the seller or buyer or any 3rd party; or

C. Promote the interests of either party to a transaction except as required to comply with this section.

4. No vicarious liability. A party to a real estate transaction is not vicariously liable for the acts or omissions of a transaction broker.

5. Actual knowledge; information. In a situation in which one affiliated licensee acting as an appointed agent of a real estate brokerage agency represents a party to a real estate transaction as the real estate brokerage agency's client and another affiliated licensee of the same real estate brokerage agency is acting as a transaction broker for another party to the transaction, the real estate brokerage agency and its affiliated licensees are considered to possess only actual knowledge and information. There is no imputation of knowledge or information by operation of law among or between the parties, the real estate brokerage agency or its affiliated licensees.

Sec. 24. 33 MRSA §172, first ¶, as enacted by PL 1999, c. 476, §1, is amended to read:

This subchapter applies to the transfer of any interest in residential real property, whether by sale, exchange, installment land contract, lease with an option to purchase or any other option to purchase; ~~when the transaction is without the assistance of a person licensed to practice real estate brokerage.~~ If a person licensed to practice real estate brokerage is involved in the transaction, the licensee is subject to the requirements of licensure in Title 32, chapter 114. The following transfers are exempt from this subchapter:

Sec. 25. 33 MRSA §173, sub-§2, as enacted by PL 1999, c. 476, §1, is repealed.

Sec. 26. 33 MRSA §173, sub-§2-A is enacted to read:

2-A. Heating system or heating source. Detailed information on the system or source used to supply heat to the property, including:

A. The type of heating system or source;

B. The age of the heating system or source;

- C. The name of the company that services the heating system or source;
- D. The date of the most recent service call on the heating system or source;
- E. The annual fuel consumption per heating system or source; and
- F. Any malfunctions per heating system or source within the past 2 years;

Sec. 27. Transition provisions; sales agent; associate broker; applications processed. A license application for real estate sales agent must be processed according to the laws in effect on the date the application is received by the Real Estate Commission. If an applicant has satisfactorily completed the requirements for licensure by July 1, 2006, the license application must be processed according to the laws in effect on June 30, 2006. A person already licensed as a sales agent on the effective date of this Act must comply with the examination procedures of Title 32, section 13200, subsection 2 to become licensed as an associate broker.

Sec. 28. Commercial leasing and sunrise review. Pursuant to the Maine Revised Statutes, Title 32, chapter 1-A, subchapter 2, the Commissioner of Professional and Financial Regulation shall conduct an independent assessment concerning expansion of the scope of practice of real estate brokerage under Title 32, section 13001, subsection 2, to include leasing of any nonresidential property, that, notwithstanding Title 32, section 13279, does not include any residential component. The commissioner shall submit a report to the Joint Standing Committee on Business, Research and Economic Development no later than January 15, 2006. The joint standing committee is authorized to introduce a bill to the Second Regular Session of the 122nd Legislature expanding the scope of practice of real estate brokerage to include leasing of any nonresidential property. This section takes effect 90 days after adjournment of the First Special Session of the 122nd Legislature.

Sec. 29. Effective date. Except as otherwise provided, this Act takes effect July 1, 2006.

Effective July 1, 2006, unless otherwise indicated.

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Title 5, §12015, New boards

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§12015. New boards

Any boards established on or after July 25, 1984 shall conform to the following provisions. [RR 1997, c. 2, §16 (cor).]

1. Membership; terms; vacancies. Each board may have no fewer than 3 members. Boards established after September 1, 2000 to regulate professions or occupations may have no more than 9 members, including at least 2 public members. Law establishing the board must provide for appointments, terms of office, qualifications and removal of its members. In the event of the death, resignation or removal of any member, the vacancy for that member's unexpired term must be filled in the same manner as that member's original appointment. [1999, c. 687, Pt. B, §2 (amd).]

2. Sunset. [1999, c. 668, §49 (rp).]

3. Sunrise review required. Any joint standing committee of the Legislature that considers proposed legislation to establish a board to license or otherwise regulate an occupation or profession not previously regulated or to substantially expand regulation of an occupation or profession currently regulated shall evaluate whether the occupation or profession should be regulated or further regulated. For the purposes of this section, "substantially expand regulation" means to add a new regulatory category or to expand the scope of practice for current practitioners. In order to evaluate this legislation, the joint standing committee shall, without a public hearing, briefly and informally review legislation referred to the committee that proposes a new occupational or professional board or substantial expansion of regulation and an applicant's answers pertaining to evaluation criteria as required by Title 32, section 60-J. Following this informal review, the committee shall: [1995, c. 686, §1 (rpr).]

A. Immediately hold a public hearing to accept information addressing the evaluation criteria listed in Title 32, section 60-J from any professional or occupational group or organization, any individual or any other interested party who is a proponent or opponent of the legislation;

[1995, c. 686, §1 (rpr).]

B. Request that the Commissioner of Professional and Financial Regulation conduct an independent assessment of the applicant's answers to the evaluation criteria listed in Title 32, section 60-J and report the commissioner's findings back to the committee by a specific date; or

[1995, c. 686, §1 (rpr).]

C. Request that the Commissioner of Professional and Financial Regulation establish a technical committee to assess the applicant's answers to the evaluation criteria listed in Title 32, section 60-J following the procedures of Title 32, chapter 1-A, subchapter II and report its findings to the commissioner within 6 months of establishment of the committee.

[1995, c. 686, §1 (rpr).]

D.

[1995, c. 686, §1 (rp).]

E.

[1995, c. 686, §1 (rp).]

F.

[1995, c. 686, §1 (rp).]

G.

[1995, c. 686, §1 (rp).]

Any recommendation by a joint standing committee to the full Legislature for the establishment or expansion of jurisdiction of an

Title 5, §12015, New boards

occupational or professional regulatory board must include a written statement describing the manner in which the assessment of answers the evaluation criteria was conducted and a concise summary of the evaluation. [1995, c. 686, §1 (rpr).]



Title 32, §60-J, Evaluation criteria

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§60-J. Evaluation criteria

Pursuant to Title 5, section 12015, subsection 3, any professional or occupational group or organization, any individual or any other interested party, referred to in this section as the "applicant group," that proposes regulation of any unregulated professional or occupational group or substantial expansion of regulation of a regulated professional or occupational group shall submit with the proposal written answers and information pertaining to the evaluation criteria enumerated in this section to the appropriate committee of the Legislature. The technical committee, the Commissioner of Professional and Financial Regulation, referred to in this subchapter as the "commissioner," and the joint standing committee, before it makes its final recommendations to the full Legislature, also shall accept answers and information pertaining to the evaluation criteria from any party that opposes such regulation or expansion and from any other interested party. All answers and information submitted must identify the applicant group, the opposing party or the interested party making the submission and the proposed regulation or expansion of regulation that is sought or opposed. The commissioner may develop standardized questions designed to solicit information concerning the evaluation criteria. The preauthorization evaluation criteria are: [1995, c. 686, §2 (new).]

1. Data on group. A description of the professional or occupational group proposed for regulation or expansion of regulation, including the number of individuals or business entities that would be subject to regulation, the names and addresses of associations, organizations and other groups representing the practitioners and an estimate of the number of practitioners in each group; [1995, c. 686, §2 (new).]

2. Specialized skill. Whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met; [1995, c. 686, §2 (new).]

3. Public health; safety; welfare. The nature and extent of potential harm to the public if the profession or occupation is not regulated, the extent to which there is a threat to the public's health, safety or welfare and production of evidence of potential harm, including a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years; [1995, c. 686, §2 (new).]

4. Voluntary and past regulatory efforts. A description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public; [1995, c. 686, §2 (new).]

5. Cost; benefit. The extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers; [1995, c. 686, §2 (new).]

6. Service availability of regulation. The extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public; [1995, c. 686, §2 (new).]

7. Existing laws and regulations. The extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from nonregulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners; [1995, c. 686, §2 (new).]

8. Method of regulation. Why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate; [1995, c. 686, §2 (new).]

9. Other states. A list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis; [1995, c. 686, §2 (new).]

10. Previous efforts. The details of any previous efforts in this State to implement regulation of the profession or occupation; [1995, c. 686, §2 (new).]

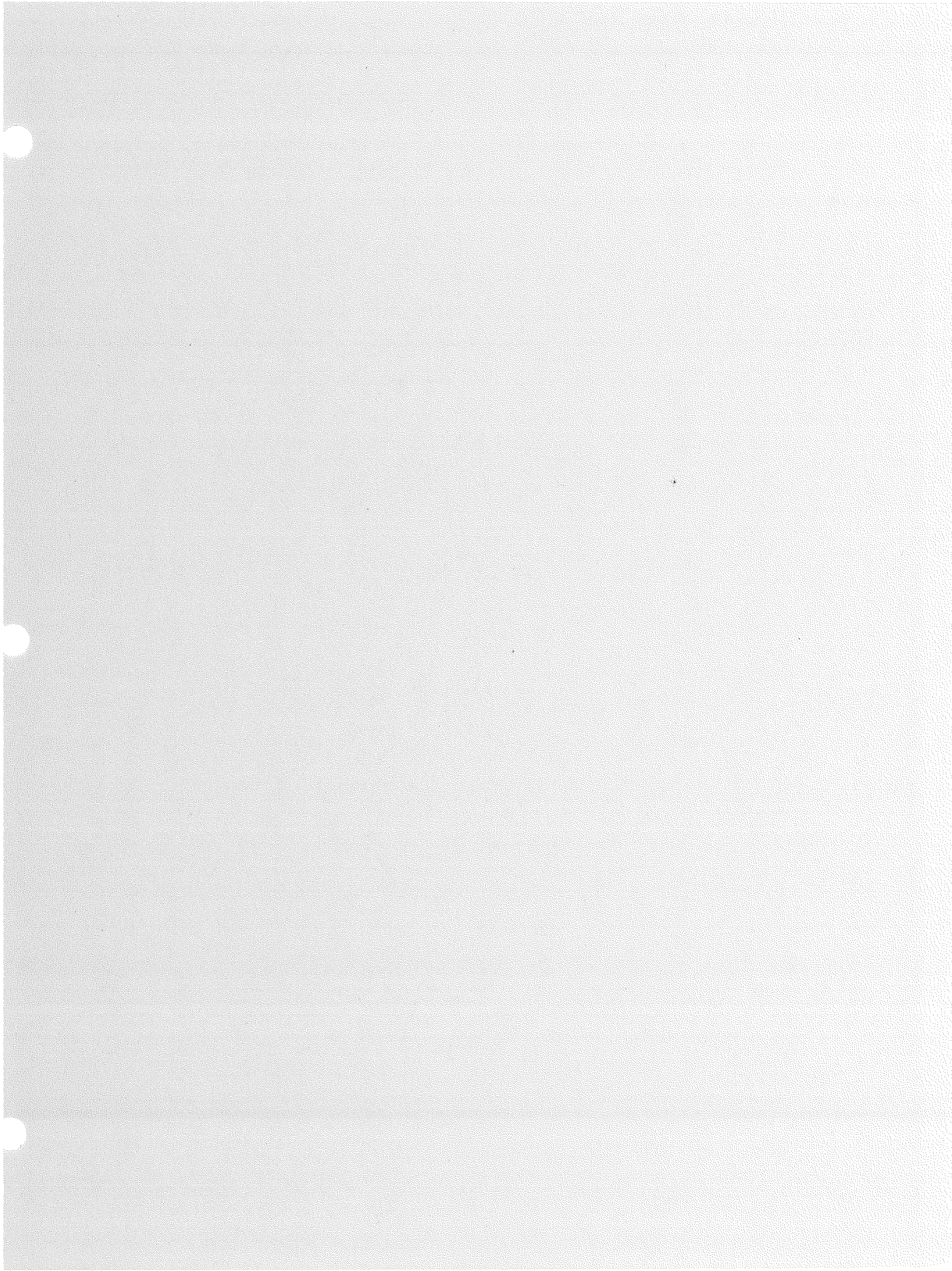
Title 32, §60-J, Evaluation criteria

11. Mandated benefits. Whether the profession or occupation plans to apply for mandated benefits; [1995, c. 686, §2 (new).]

12. Minimal competence. Whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are; and [1995, c. 686, §2 (new).]

13. Financial analysis. The method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms. [1995, c. 686, §2 (new).]

PL 1995, Ch. 686, §2 (NEW).



Title 32, Chapter 1-A, GENERAL PROVISIONS

§60-K. Commissioner's independent assessment

1. **Fees.** Any applicant group whose regulatory proposal has been directed to the commissioner for independent assessment shall pay an administrative fee determined by the commissioner, which may not exceed \$500. The commissioner may waive the fee if the commissioner finds it in the public's interest to do so. Such a finding by the commissioner may include, but is not limited to, circumstances in which the commissioner determines that: [1995, c. 686, §2 (new).]

A. The applicant group is an agency of the State; or

[1995, c. 686, §2 (new).]

B. Payment of the application fee would impose unreasonable hardship on members of the applicant group.

[1995, c. 686, §2 (new).]

2. **Criteria.** In conducting the independent assessment, the commissioner shall apply the evaluation criteria established in section 60-J to all of the answers and information submitted to the commissioner or otherwise collected by the commissioner pursuant to section 60-J. [1995, c. 686, §2 (new).]

3. **Recommendations.** The commissioner shall prepare a final report, for the joint standing committee of the Legislature that requested the evaluation, that includes any legislation required to implement the commissioner's recommendation. The commissioner may recommend that no legislative action be taken on a proposal. If the commissioner finds that final answers to the evaluation criteria are sufficient to support some form of regulation, the commissioner shall recommend an agency to be responsible for the regulation and the level of regulation to be assigned to the applicant group. The recommendations of the commissioner must reflect the least restrictive method of regulation consistent with the public interest. [1995, c. 686, §2 (new).]

PL 1995, Ch. 686, §2 (NEW).

§60-L. Technical committee; fees; membership; duties; commissioner's recommendation

1. **Fees.** Any applicant group whose regulatory proposal has been directed to the commissioner for review by a technical committee shall pay a fee determined by the commissioner as required to administer the technical committee, which fee may not exceed \$1,000. The administrative fee is not refundable, but the commissioner may waive all or part of the fee if the commissioner finds it in the public's interest to do so. Such a finding by the commissioner may include, but is not limited to, circumstances in which the commissioner determines that: [1995, c. 686, §2 (new).]

A. The applicant group is an agency of the State; or

[1995, c. 686, §2 (new).]

B. Payment of the application fee would impose unreasonable hardship on members of the applicant group.

[1995, c. 686, §2 (new).]

2. **Technical committee membership.** The commissioner shall appoint a technical committee consisting of 7 members to examine and investigate each proposal. [1995, c. 686, §2 (new).]

A. Two members must be from the profession or occupation being proposed for regulation or expansion of regulation.

[1995, c. 686, §2 (new).]

B. Two members must be from professions or occupations with a scope of practice that overlaps that of the profession or occupation being proposed for regulation or expansion of regulation. If there is more than one overlapping profession or occupation, representatives of the 2 with the greatest number of practitioners must be appointed.

[1995, c. 686, §2 (new).]

C. One member must be the commissioner or the commissioner's designee.

[1995, c. 686, §2 (new).]

D. Two members must be public members. These persons and their spouses, parents or children may not be or ever have been members of, and may not have or ever have had a material financial interest in, the profession or occupation being proposed for regulation or expansion of regulation or another profession or occupation with a scope of practice that may overlap that of the profession or occupation being proposed for regulation.

[1995, c. 686, §2 (new).]

The professional and public members serve without compensation. The chair of the committee must be the commissioner, the commissioner's designee or a public member. The commissioner shall ensure that the total composition of the committee is fair and equitable. [1995, c. 686, §2 (new).]

3. **Meetings.** As soon as possible after appointment, a technical committee shall meet and review the proposal assigned to it. Each

Title 32, Chapter 1-A, GENERAL PROVISIONS

committee shall investigate the proposed regulation and, on its own motion, may solicit public input. Notice of all meetings must be printed in the legislative calendar at an appropriate time preceding the meeting. [1995, c. 686, §2 (new).]

4. Procedure for review. Applicant groups are responsible for furnishing evidence upon which a technical committee makes its findings. The technical committee may also utilize information received through public input or through its own research or investigation. The committee shall make a report of its findings and file the report with the commissioner. The committee shall evaluate the application presented to it based on the information provided as required by section 60-J. If the committee finds that additional information is required to assist in developing its recommendations, it may require that the applicant group provide this information or may otherwise solicit information for this purpose. If the committee finds that final answers to the evaluation criteria are sufficient to support regulation of a profession or occupation not currently regulated, the committee must also recommend the least restrictive method of regulation to be implemented, consistent with the public interest. Whether it recommends approval or denial of an application, the committee may make additional recommendations regarding solutions to problems identified during the review. [1995, c. 686, §2 (new).]

5. Commissioner report. After receiving and considering reports from the technical committee, the commissioner shall prepare a final report, for the joint standing committee of the Legislature that requested the review, that includes any legislation required to implement the commissioner's recommendation. The final report must include copies of the committee report, but the commissioner is not bound by the findings and recommendations of the report. In compiling the report, the commissioner shall apply the criteria established in section 60-J and may consult with the technical committee. The recommendations of the commissioner must reflect the least restrictive method of regulation consistent with the public interest. The final report must be submitted to the joint standing committee of the Legislature having jurisdiction over occupational and professional regulation matters no later than 9 months after the proposal is submitted to the technical committee and must be made available to all other members of the Legislature upon request. [1995, c. 686, §2 (new).]

The commissioner may recommend that no legislative action be taken on a proposal. If the commissioner recommends that a proposal of an applicant group be approved, the commissioner shall recommend an agency to be responsible for the regulation and the level of regulation to be assigned to the applicant group. [1995, c. 686, §2 (new).]

PL 1995, Ch. 686, §2 (NEW).



MAINE ASSOCIATION OF REALTORS®

19 Community Drive • Augusta, ME 04330 • Phone: (207) 622-7501 • Fax: (207) 623-3590 • E-Mail: info@mainerealtors.com

November 15, 2005

Commissioner Christine A. Bruenn
Department of Professional and Financial Regulation
35 State House Station
Augusta, ME 04333-0035

RECEIVED

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Department of Professional
& Financial Regulation

Dear Commissioner Bruenn,

Enclosed please find the Maine Association of REALTORS® answers to the sunrise review survey regarding the licensure of commercial leasing as proposed in LD 1525, "An Act to Amend the Real Estate Brokerage Laws."

We feel the State of Maine should provide the same consumer protection for commercial leasing transactions that 45 other states currently offer. The Maine Real Estate Commission presently regulates and licenses residential real estate brokers, and commercial leasing transactions involve various financial details and complex negotiations that should also be handled by a licensed professional in the same manner as residential real estate.

The original intent of LD 1525 was to add commercial leasing to the current definition of real estate brokerage activities, and not to include property managers, lawyers, or anyone else but those brokers that engage in commercial leasing transactions. The state of Rhode Island has adopted language that is enclosed which would remove those mentioned above as a potentially unintended consequence of this bill.

Under current law out-of-state brokers can freely come into Maine, negotiate a commercial leasing deal, and then leave without paying any taxes on the commission they have earned. These out-of-state brokers are conducting leasing transactions in areas they are not familiar with, leaving consumers at a severe disadvantage. It is long past time for Maine to fall in line with the other 45 states that regulate and license commercial leasing. We remain available to the Department, and the Business, Research, and Economic Development Committee to address any questions or concerns. Thank you for your time and consideration.

Sincerely,

Linda Gifford
MAR Legal Counsel

Enclosure



Sunrise Review Survey: Making Commercial Leasing a Licensed activity in the State of Maine.

Please return the completed survey to the Commissioner's Office, 35 State House Station, Augusta, ME 04333-0035. This form may also be downloaded from the department's Web site at www.maine.gov/pfr. Information may be provided on additional sheets of paper as needed.

General Information

1. Group or organization represented:

Maine Association of REALTORS®

2. Position on legislation. Does this group or organization support or oppose making commercial leasing a licensed activity?

The Maine Association of REALTORS® helped introduce this piece of legislation, LD 1525, and is very supportive of making commercial leasing a licensed activity in the State of Maine.

Evaluation Criteria (32 M.R.S.A. § 60-F)

1. Data on group subject to regulation. Please provide a description of the professional or occupational group proposed for an expanded scope of practice, including the number of individuals who would be subject to regulation; the names and addresses of associations or other groups representing licensees; and an estimate of the number of practitioners in each association or organization.

According to the Maine Real Estate Commission, as of May 31, 2005, 8,936 licensees would be affected by the addition of commercial leasing as part of the definition of real estate brokerage activities. Current law does not require any license or certification in order to provide commercial leasing services.

As of September 1, 2005, there were 5,048 members of the Maine Association of REALTORS®, all of whom are involved in the conveyancing of real estate in the state of Maine.

Androscoggin Valley Board of REALTORS®
Aroostook County Council of REALTORS®
Bangor Board of REALTORS®
Hancock-Washington Board of REALTORS®
Kennebec Valley Board of REALTORS®
Lincoln County Board of REALTORS®
Maine Commercial Association of REALTORS®
Merrymeeting Board of REALTORS®
Mid-Coast Board of REALTORS®

Mountains Council of REALTORS®
Portland Board of REALTORS®
Western Maine Board of REALTORS®
York County Council of REALTORS®

2. Specialized skill. Please describe the specialized skill and knowledge required to be do commercial leasing?

Commercial leasing involves various financial details and complex negotiations, and should be provided by licensed professionals. In order to effectively represent a Landlord or Tenant in a commercial lease transaction, a specialist needs to be familiar with the market conditions surrounding the property and the market lease rates. Furthermore, a specialist must be competent in explaining and understanding terms that include operating expenses, useable versus leasable square footage, holdover clauses, CPI, right of offer versus right of first refusal, sublease provisions, and early termination (to name a few). It is imperative that education be required for those that are often involved in some of the most expensive business transactions of property in the state.

Although property management may technically fall under the definition of "commercial leasing," the intent of the original bill that instigated this sunrise review (LD 1525) was that property managers be excluded. Please see the attachment to this survey for an example of proposed statutory language used in Rhode Island that would exclude property managers from the definition.

3. Threat to public health, safety, or welfare. Please describe the nature and extent of potential harm to the public, if any?

The sale of real estate is a complex and highly regulated activity that currently requires a state-issued license and continuing education. The leasing of commercial real estate is often just as complex as real estate sales, and the State of Maine should also require a license for the practice of leasing commercial real estate. Often, the value of commercial leases is far greater than real estate sales. For example, a common 20,000 +/- square foot office lease at \$15 per square foot values at \$30,000 per year. Typically, there are annual increases and the lease term is a minimum of five – ten years. On a ten-year deal with no increases, the lease value would be \$3.0 million dollars. This is a lot of liability and responsibility for a representative that does not have the training or a license for this type of transaction. Referring back to question #2, how can an unlicensed representative effectively represent their client if they are not held to minimum standards of practice?

Commercial leasing is a licensed activity in 45 of the 50 States. Other States require a license for commercial leasing because it sets standards of ethics and requires fiduciary responsibility for licensed brokers. Currently, there is no protection in the State of Maine for commercial landlords and tenants.

4. Voluntary and past regulatory efforts. A description of the voluntary efforts made by parishioners of the profession or occupation to protect the public

through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public;

There are many designations and educational opportunities available to those brokers who choose to pursue them - those that offer classes and designations include CCIM (Certified Commercial Investment Member) and SIOR (Society of Industrial and Office REALTORS®). However, because commercial leasing is not a licensed activity, only a small percent of commercial real estate brokers in the State of Maine have taken classes or received designations. Of the 8,936 Maine licensed real estate agents (according to the MREC's May statistics), just 35 agents or 0.4% have completed their designation for CCIM or SIOR. The seminars and designations are based on national standards of practice and provide little insight or relevance to the local Maine market. Clearly, we are in favor of any and all Maine brokers who acquire these affiliations, but we feel that additional education and regulation should be required in the State of Maine.

5. Costs and benefits of regulation

The benefits of regulating and licensing commercial leasing brokers clearly outweigh the costs. It is in the best interest of the citizens of Maine to be represented by licensed professionals in commercial leasing deals that are often more complex than real estate sales. For nearly every reason that real estate agents are licensed in the state of Maine for the sale of real estate, commercial leasing brokers should also be licensed. Maine citizens do not gain any benefit from being involved in transactions with unlicensed and unregulated out-of-state professionals. Providing a regulatory board (the Real Estate Commission) to oversee these professionals will only provide Maine citizens with more protections in the complex world of commercial real estate.

Commission fees are already charged to the consumer, and they are dictated by competition between commercial brokerages. But, we expect additional revenue to the State of Maine if commercial leasing is made a licensed activity.

Under current law, out-of-state brokers are coming into Maine and brokering transactions without using Maine brokers. It is counterproductive for the State of Maine to allow money and business to leave the State of Maine, especially at a time when money is so tight. Also, how many out-of-state brokers actually pay their taxes on the commissions they earn? By regulating commercial leasing, this would provide an opportunity for the state to generate additional revenue.

The costs of regulating and licensing commercial leasing brokers are minimal. An existing regulatory structure (the Real Estate Commission) already exists to handle the licensing and corresponding complaints. An extra hurdle will confront Maine citizens who seek to enter the practice of commercial leasing. However, requiring some minimum level of competence and creating a forum for complaints will only ultimately benefit the citizens of Maine.

6. Service Availability for Regulation. The extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public:

Regulation of commercial leasing will increase the amount of quality, reliable services available in the State of Maine. Maine consumers will be represented by Maine licensed brokers who have local knowledge and expertise of the Maine market.

There are a substantial amount of properties and prospective tenants that are being represented by out-of-state brokers, who are not held to any standards by the State of Maine. Furthermore, out-of-state brokers are doing leasing transactions in territories that they are not familiar with. Brokers in Bangor do not have local expertise in the Sanford market. Therefore, it is highly unlikely that a Massachusetts broker would know the market conditions and lease values in Waterville, Maine.

With a license requirement in place, there will be an increase in Maine broker representation, which will provide additional revenue and jobs for the State of Maine. When clients are represented by brokers in Maine, our own state's businesses stand a much better chance to be located within Maine properties. How many out-of-state brokers know of Pat's Pizza or other Maine chains? Why should Maine businesses be put at the bottom of the list for Maine properties? An out-of-state broker is aware of the national tenants but has limited knowledge of Maine businesses.

7. Previous efforts to expand the scope of practice.

Please see Question 10 - the practice of leasing real estate was a licensed activity in the State of Maine at least from 1944 until 1988.

8. Method of Regulation. Why registration, certification, license to use the title, license to practice or another type of regulation is being proposed and the rationale for the regulation.

As has been mentioned, the practice of commercial leasing requires a very similar skill set as is required by real estate sales brokers, who are successfully regulated through licensing and regulation by the Real Estate Commission. For commercial leasing brokers, all expenses would be paid by the licensees through licensing fees and would be regulated by the Maine Real Estate Commission in the same manner as all other real estate brokerage activities.

9. Other States. A list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of before-and-after analysis.

The following 45 states (and Washington DC) currently require a license to conduct commercial leasing: Alabama, Alaska, Arizona, Arkansas, California, Colorado,

Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin.

(See attached for copies of other states' leasing laws)

10. Previous Efforts. The details of any previous efforts in this State to implement regulation of the profession or occupation.

The practice of leasing real estate was a licensed activity in the State of Maine at least from 1944 until 1988. In 1944, it was "unlawful for any person, partnership, association, or corporation to act as a real estate broker . . . without a license issued by the [real estate] commission." R.S. ch. 75, § 3 (1944). A "real estate broker" was defined as "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." *Id.* § 2. This language existed in much the same manner until 1988 when Title 32 was recodified and amended to nearly the current version, which omits the practice of leasing of any type of real estate from the licensure requirement.

11. Mandated Benefits. Whether the profession or occupation plans to apply for mandated benefits.

No.

12. Minimum competence. Whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are:

The proposed expansion will provide additional protection to the Maine consumer by requiring commercial leasing representatives to maintain standards of ethics and fiduciary responsibility, which will not exceed those standards currently followed by real estate sales brokers. The point of this effort to license commercial leasing brokers is to protect Maine citizens by creating standards of minimal competence for these professionals involved in a very complex area of Maine business.

13. Financial Analysis. The method to finance the proposed legislation.

The necessary funding for this increased regulation will be addressed through additional licensing fees and fees for education.

Date: November 9, 2005

Completed by: Jeremy Payne - Maine Association of REALTORS®

Sunrise Review Survey: Making Commercial Leasing a Licensed activity in the State of Maine.

Please return the completed survey to the Commissioner's Office, 35 State House Station, Augusta, ME 04333-0035. This form may also be downloaded from the department's Web site at www.maine.gov.pfr. Information may be provided on additional sheets of paper as needed.

General Information

1. Group or organization represented:

Maine Commercial Association of REALTORS®

2. Position on legislation. Does this group or organization support or oppose making commercial leasing a licensed activity?

The Maine Commercial Association of REALTORS® strongly supports making commercial leasing a licensed activity in the State of Maine.

Evaluation Criteria (32 M.R.S.A. § 60-J)

1. Data on group subject to regulation. Please provide a description of the professional or occupational group proposed for an expanded scope of practice, including the number of individuals who would be subject to regulation; the names and addresses of associations or other groups representing licensees; and an estimate of the number of practitioners in each association or organization.

According to the Maine Real Estate Commission, as of May 31, 2005, 8,936 licensees would be potentially affected by this proposed expansion of regulation. As the law currently reads, anyone can provide commercial leasing services without any kind of required license or regulation.

As of the end of August, 2005, there were 120 members of the Maine Commercial Association of REALTORS® who deal primarily with commercial leasing:

Androscoggin Valley Board of REALTORS®
Aroostook County Council of REALTORS®
Bangor Board of REALTORS®
Hancock-Washington Board of REALTORS®
Kennebec Valley Board of REALTORS®
Lincoln County Board of REALTORS®
Maine Commercial Association of REALTORS®
Merrymeeting Board of REALTORS®
Mid-Coast Board of REALTORS®
Mountains Council of REALTORS®
Portland Board of REALTORS®
Western Maine Board of REALTORS®
York County Council of REALTORS®

2. Specialized skill. Please describe the specialized skill and knowledge required to be do commercial leasing?

Commercial leasing is a specialized skill that needs to be provided by licensed professionals. To effectively represent a Landlord or Tenant in a commercial lease transaction, a specialist must fully understand the market conditions surrounding the property and the market lease rates. Furthermore, a specialist must be competent in explaining and understanding terms that include operating expenses, useable versus leasable square footage, holdover clauses, CPI, right of offer versus right of first refusal, sublease provisions, and early termination (to name a few). To properly represent a party in a commercial leasing transaction, you must be educated in this field.

3. Threat to public health, safety, or welfare. Please describe the nature and extent of potential harm to the public, if any?

Because leasing commercial real estate is often as complex as selling real estate, the State should also require a license for the practice of leasing commercial real estate. Often, the value of commercial leases is far greater than real estate sales. For example, a common 10,000 +/- square foot office lease at \$15 per square foot values at \$150,000 per year. Typically there are annual increases and the lease term is a minimum of five – ten years. On a ten-year deal with no increases, the lease value would be \$1.5 million dollars. This is a lot of liability and responsibility for a representative that does not have the training or a license for this type of transaction.

Commercial leasing is a licensed activity in 45 of the 50 States. Other States require a license for commercial leasing because it sets standards of ethics and requires fiduciary responsibility for licensed brokers. Currently, there is no protection in the State of Maine for commercial landlords and tenants.

MCAR does not understand why the Real Estate Commission would not support a bill that would protect the consumer. We are concerned that the Real Estate Commission is not supporting this bill because they are understaffed and are already having difficulties protecting Maine brokers from out-of-state sales transactions.

4. Voluntary and past regulatory efforts. A description of the voluntary efforts made by parishioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public;

There are numerous seminars and designations offered to better educate representatives in the practice of commercial leasing. Organizations that offer these classes and designations include CCIM (Certified Commercial Investment Member) and SIOR (Society of Industrial and Office REALTORS®). However, because commercial leasing is not a licensed activity, only a small percent of commercial real estate brokers in the State of Maine have taken classes or received designations. In fact, out of 8,936 Maine licensed real estate agents (according to the MREC's May statistics), just 35 agents or 0.4% have completed their designation for CCIM or SIOR. Furthermore, these seminars and designations are based on national standards of practice and provide little insight or relevance to the local Maine market. While we strongly support Maine brokers who are acquiring these affiliations, it is our position that additional education should be required in the State of Maine.

5. Costs and benefits of regulation

We do not foresee a change in commission fees charged to consumers for commercial leasing activity. Commission fees are already charged to the consumer, and they are dictated by competition between commercial brokerages. However, we do anticipate additional revenue to the State of Maine if commercial leasing is made a licensed activity.

Currently, out-of-state Brokers are coming into Maine and brokering transactions without using Maine Brokers. The commission fees received by the out-of-state brokers are lost to the Maine economy. Why would the State of Maine be supportive of allowing money and business to leave the State of Maine? Also, how much of the taxes on the out-of-state Broker commissions actually go to the Maine Government? Regulating this practice should provide additional business and revenue to Maine.

6. Service Availability for Regulation. The extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public:

Regulation of commercial leasing will increase the amount of services available in the State of Maine. Maine consumers will obtain representation from Maine licensed brokers who will have local knowledge and expertise of the Maine market.

There are a substantial amount of properties and prospective tenants that are being represented by out-of-state brokers. These out-of-state brokers are not held accountable for any standards set by the State of Maine. Furthermore, out-of-state brokers are doing leasing transactions in territories that they are not familiar with. Every market is different. Brokers in Greater Portland don't have local expertise in the Ellsworth market. How can a New Hampshire Broker know the market conditions and lease values in Brunswick, Maine?

With a license requirement in place, there will be an increase in Maine broker representation, which will provide additional revenue and jobs for the State of Maine. Lastly, with Maine broker representation, Maine businesses have a better chance to be located within Maine properties. How many out-of-state brokers know of Amato's or other Maine chains? Why should Maine businesses be put at the bottom of the list for Maine properties? An out-of-state broker is aware of the national tenants but has limited knowledge of Maine businesses.

7. Previous efforts to expand the scope of practice.

As stated in the response to Question 10, the practice of leasing real estate was a licensed activity in the State of Maine at least from 1944 until 1988.

8. Method of Regulation. Why registration, certification, license to use the title, license to practice or another type of regulation is being proposed and the rationale for the regulation.

All expenses would be paid by the licensees through licensing fees and would be overseen by the Maine Real Estate Commission.

9. Other States. A list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of before-and-after analysis.

These are the 45 states that require a license to conduct commercial leasing activities: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Washington DC, West Virginia, Wisconsin.

(Please see attached documents for examples of other states' laws)

10. Previous Efforts. The details of any previous efforts in this State to implement regulation of the profession or occupation.

The practice of leasing real estate was a licensed activity in the State of Maine at least from 1944 until 1988. In 1944, it was "unlawful for any person, partnership, association, or corporation to act as a real estate broker . . . without a license issued by the [real estate] commission." R.S. ch. 75, § 3 (1944). A "real estate broker" was defined as "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." *Id.* § 2. This language existed in much the same manner until 1988 when Title 32 was recodified and amended to nearly the current version, which omits the practice of leasing of any type of real estate from the licensure requirement.

11. Mandated Benefits. Whether the profession or occupation plans to apply for mandated benefits.

No.

12. Minimum competence. Whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are:

By making commercial leasing a licensed activity, commercial leasing representatives will be required to maintain strict ethical standards and fiduciary responsibility. It is our position that this is necessary to protect the Maine consumer.

13. Financial Analysis. The method to finance the proposed legislation.

Financing for this legislation will be addressed through additional licensing fees and fees for education.

Date: November 8, 2005

Completed by: Matthew Cardente, Board Member of the Maine Commercial Association of REALTORS®

State Law Requires a Real Estate License to Conduct Commercial Leasing

	STATE		
1	Idaho	No	
2	Maine	No	
3	Mississippi	No	
4	Vermont	No	
5	Wyoming	No	
1	Alabama	Yes	
2	Alaska	Yes	*
3	Arizona	Yes	
4	Arkansas	Yes	*
5	California	Yes	
6	Colorado	Yes	*
7	Connecticut	Yes	*
8	DC	Yes	*
9	Delaware	Yes	
10	Florida	Yes	
11	Georgia	Yes	
12	Hawaii	Yes	
13	Illinois	Yes	
14	Indiana	Yes	*
15	Iowa	Yes	*
16	Kansas	Yes	
17	Kentucky	Yes	*
18	Louisiana	Yes	
19	Maryland	Yes	*
20	Massachusetts	Yes	*
21	Michigan	Yes	
22	Minnesota	Yes	*
23	Missouri	Yes	
24	Montana	Yes	*
25	Nebraska	Yes	
26	Nevada	Yes	*
27	New Hampshire	Yes	
28	New Jersey	Yes	
29	New Mexico	Yes	
30	New York	Yes	*
31	North Carolina	Yes	
32	North Dakota	Yes	*
33	Ohio	Yes	
34	Oklahoma	Yes	
35	Oregon	Yes	*
36	Pennsylvania	Yes	*
37	Rhode Island	Yes	*
38	South Carolina	Yes	
39	South Dakota	Yes	
40	Tennessee	Yes	
41	Texas	Yes	
42	Utah	Yes	
43	Virginia	Yes	*
44	Washington	Yes	
45	West Virginia	Yes	
46	Wisconsin	Yes	*

Data from Association of Real Estate License Law Officials Digest - 2004 unless indicated by *. * means data obtained by calling state real estate licensing authority or association directly.

Rhode Island language

TITLE 5

Businesses and Professions

CHAPTER 5-20.5

Real Estate Brokers and Salespersons

SECTION 5-20.5-2

§ 5-20.5-2 Persons exempt. – (a) Neither the term "real estate broker" nor "real estate salesperson" is held to include:

(1) Any person, partnership, association, or corporation, who, as a bona fide owner, lessee, or lessor, performs any of the previously stated acts as to property owned, or leased by them, or to their regular employees, where those acts are performed in the regular course of, or as an incident to the management of the property and the investment in the property; or

(2) Any person, partnership, association, or corporation, or any of their employees, who seeks to acquire, lease, rent, sell, or deal in real estate which has been or will be used or held for investment by that person, partnership, association, or corporation.

(b) This chapter is also not to be construed to include:

(1) Any attorney at law licensed by the supreme court of the state, nor any person holding in good faith, an executed power of attorney from the owner, authorizing the final consummation and execution for the sale, purchase, leasing, or exchange of real estate;

(2) The acts of any person while acting as a receiver, trustee, administrator, executor, guardian, or under court order, or while acting under authority of a deed of trust or will;

(3) The acts of any person, partnership, association, or corporation who appraises real or personal property for the purpose of conducting a mass appraisal, municipal revaluation for tax purposes or other forms of ad valorem appraisal; or

(4) Public officers while performing their duties as public officers.

New Hampshire



REVISED STATUTES ANNOTATED CHAPTER 331-A

Repealed and Reenacted by Chapter 348.1, Laws of 1993

Section 331-A:1 Purpose.

It is the policy of this state to regulate the practice of real estate brokers and salespersons in order to ensure that they meet and maintain minimum standards which promote public understanding and confidence in the business of real estate brokerage.

Source. 1993, 348:1, eff. Jan. 1, 1994.

331-A:2 Definitions. - In this chapter:

I. "Advance fees" mean any fees charged for services including, without any limitation, any fees charged for listing, advertising, or offering for sale or lease any real property. Advance fees shall not include fees paid solely for advertisement in a newspaper or other publication of general circulation.

I-a. "Agency" means a fiduciary relationship between a principal and an agent arising out of a brokerage agreement whereby the agent is engaged to do certain acts on behalf of the principal in dealings with a third party.

I-b. "Associate broker" means any person who is licensed as a real estate broker, but who is employed by a principal broker or under contract, expressed or implied, to a principal broker and in addition operates under the supervision of a principal broker to participate in any activity described in paragraph III of this section.

II. "Branch office" means a real estate broker's office other than the principal place of business.

III. "Broker" means any person acting for another on commission or for other compensation, for the promise of such commission or other compensation, or any person licensed under this chapter who:

(a) Sells, exchanges, purchases, rents, or leases real estate.

- (b) Offers to sell, exchange, purchase, rent or lease real estate.
- (c) Negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate.
- (d) Lists, offers, attempts or agrees to list real estate for sale, lease or exchange.
- (e) Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or improvements on real estate.
- (f) Collects, offers, attempts or agrees to collect rent for the use of real estate.
- (g) Advertises or holds oneself out as being engaged in the business of buying, selling, exchanging, renting or leasing real estate.
- (h) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, lease, or rental of real estate.
- (i) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate.
- (j) Engages in the business of charging an advance fee in connection with any contract whereby the person undertakes to promote the sale or lease of real estate, through its listing in a publication or data base issued for such purpose, through referral of information concerning such real estate to brokers, or both.

III-a. "Brokerage agreement" means a written contract between a principal and a real estate brokerage firm intended to bring parties together for the sale, purchase, exchange, rent, or lease of real estate.

III-b. "Buyer" means a party in the transaction involved in the purchase or exchange of real estate.

III-c. "Buyer agent" means a licensee acting on the behalf of a buyer or tenant in the purchase, exchange, rent, or lease of real estate.

IV. "Commission" means the New Hampshire real estate commission.

IV-a. "Disclosed dual agent" means a licensee acting for more than one party whose interests may differ in a transaction with the knowledge and written consent of all parties for whom the licensee acts.

V. "Executive director" means the executive director of the New Hampshire real estate commission.

V-a. "Landlord" means a party in a transaction who owns real estate intended for rental or leasing purposes. For the purposes of this chapter, "landlord" shall also mean "lessor."

V-b. "Licensee" means a broker or salesperson licensed by the New Hampshire real estate commission under the provisions of this chapter.

REAL ESTATE LICENSING LAW

Sec. 20-311. Definitions. As used in this chapter, unless the context otherwise requires: (1) "Real estate broker" or "broker" means (A) any person, partnership, association, limited liability company or corporation which acts for another person or entity and for a fee, commission or other valuable consideration, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of, an estate or interest in real estate, or a resale of a mobile manufactured home, as defined in subdivision (1) of section 21-64, or collects or offers or attempts to collect rent for the use of real estate, and (B) any person, partnership, association, limited liability company or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, upon commission, upon a salary and commission basis or otherwise to sell such real estate, or any parts thereof, in lots or other parcels, and who sells or exchanges, or offers, attempts or agrees to negotiate the sale or exchange of, any such lot or parcel of real estate;

(2) "Real estate salesperson" or "salesperson" means a person affiliated with any real estate broker as an independent contractor or employed by a real estate broker to list for sale, sell or offer for sale, to buy or offer to buy or to negotiate the purchase or sale or exchange of real estate, or to offer for resale, a mobile manufactured home, as defined in subdivision (1) of section 21-64, or to lease or rent or offer to lease; rent or place for rent any real estate, or to collect or offer or attempt to collect rent for the use of real estate for or on behalf of such real estate broker, or who offers, sells or attempts to sell the real estate or mobile manufactured homes of a licensed broker, or acting for another as a designated seller agent or designated buyer agent, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of, an estate or interest in real estate, or a resale of a mobile manufactured home, as defined in subsection (a) of section 21-64, or collects or offers or attempts to collect rent for the use of real estate, but does not include employees of any real estate broker whose principal occupation is clerical work in an office, or janitors or custodians engaged principally in that occupation;

(3) "Engaging in the real estate business" means acting for another and for a fee, commission or other valuable consideration in the listing for sale, selling, exchanging, buying or renting, or offering or attempting to negotiate a sale, exchange, purchase or rental of, an estate or interest in real estate or a resale of a mobile manufactured home, as defined in subdivision (1) of section 21-64, or collecting upon a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate;

(4) "Person" means any individual, partnership, association, limited liability company or corporation;

(5) "Commission" means the Connecticut Real Estate Commission appointed under the provisions of section 20-311a;

(6) "Designated agency" means the appointment by a real estate broker of one or more brokers or salespersons affiliated with or employed by the real estate broker to solely represent a buyer or tenant as a designated buyer's agent and appoint another to represent a seller or landlord as a designated seller's agent in a transaction;

(7) "Designated buyer agent" means a broker or salesperson designated by the real estate broker with whom the broker or salesperson is affiliated or employed to solely represent a named buyer or tenant client of the real estate broker during the term of a buyer representation agreement or authorization;

(8) "Designated seller agent" means a broker or salesperson designated by the real estate broker with whom the broker or salesperson is affiliated or employed to solely represent a named seller or landlord client of the real estate broker during the term of a listing agreement or authorization; and

(9) "Commercial real estate transaction" means any transaction involving the sale, exchange, lease or sublease of real property other than real property containing any building or structure occupied or intended to be occupied by no more than four families or a single building lot to be used for family or household purposes.

Sec. 20-311a. Real estate commission. (a) There is created in the department of consumer protection the connecticut real estate commission.

(b) The commission shall consist of eight persons, electors of the state, appointed by the Governor. Three of the members shall be at the time of appointment licensed real estate brokers, two of the members shall be at the time of appointment licensed real estate salespersons and three of the members shall be public members. Not more than a bare majority of the commission shall be members of the same political party and there shall be at least one member from each congressional district.

(c) The members of the commission shall serve until the expiration of the term for which they were appointed and until their successors have qualified. Members shall not be compensated for their services but shall be reimbursed for necessary expenses incurred in the performance of their duties. The Governor may remove any member for cause upon notice and an opportunity to be heard. Upon the death, resignation or removal of a member, the Governor shall appoint a successor to serve for the unexpired portion of the vacated term and until such member's successor is appointed and qualifies. Each member shall, before entering upon his duties, take and file with the commission an oath to faithfully perform the duties of his office.

Sec. 20-311b. Duties of commission. (a) Within thirty days after the appointment of the members of the commission, the commission shall meet in the city of Hartford for the purpose of organizing by selecting such officers other than a chairperson as the commission may deem necessary and appropriate. A majority of the members of the commission shall constitute a quorum for the exercise of the powers or authority conferred upon it.

(b) (1) The commission shall authorize the department of consumer protection to issue licenses to real estate brokers and real estate salespersons. The commission shall receive and approve applications for real estate student intern programs pursuant to the provisions of section 20-1c.

(2) The commission shall administer the provisions of this chapter as to licensure and issuance, renewal, suspension or revocation of licenses concerning the real estate business.

(c) The commission shall be provided with the necessary office space in Hartford by the commissioner of public works. The place of business of

salesman within this state without first obtaining a real estate license from the department.

The commissioner may prefer a complaint for violation of this section before any court of competent jurisdiction, and the commissioner and his counsel, deputies or assistants may assist in presenting the law or facts at the trial.

Prosecution of Violations

It is the duty of the district attorney of each county in this state to prosecute all violations of this section in their respective counties in which the violations occur.

Broker Defined

10131. A real estate broker within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

- (a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity.
- (b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities.
- (c) Assists or offers to assist in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal government.
- (d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.
- (e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof.

Some Managers and Employees Exempt

10131.01. (a) Subdivision (b) of Section 10131 does not apply to (1) the manager of a hotel, motel, auto and trailer park, to the resident manager of an apartment building, apartment complex, or court, or to the employees of that manager, or (2) any person or entity, including a person employed by a real estate broker, who, on behalf of another or others, solicits or arranges, or accepts reservations or money, or both, for transient occupancies described in

estate licenses; the investigation of complaints and, where appropriate, pursuit of formal action against licensees; the investigation of nonlicensees alleged to be performing acts for which a license is required; and the regulation of the sale or lease of subdivision interests. The Commissioner also, through real estate broker and other license requirements, regulates dealings in mineral, oil and gas property and Prepaid Rental Listing Services.

The Real Estate Advisory Commission

The Commissioner appoints the ten members of the Real Estate Advisory Commission. Six are California real estate brokers and four are public members.

The Commission consults with the Commissioner and makes recommendations regarding the functions and policies of the Department and how the Department may best serve the people of the State and recognize the legitimate needs of the industry. After notice of time and place, the Commissioner presides at quarterly meetings of the Commission. At Commission meetings, licensees and members of the public may express their views and make suggestions.

When a Real Estate License Is Required

Sections 10131, 10131.1, 10131.2, 10131.3, 10131.4, 10131.45, and 10131.6 of the Business and Professions Code (hereinafter, the Code) define the scope of a real estate broker's activity. Mortgage loan broker activities may be found in Sections 10131 (d) and 10240, et seq. of Article 7 (known as the Real Property Loan Law). Trust deed transactions and real property sales contract transactions requiring a license are defined in Sections 10131 (e) and Sections 10230-10236.2 (Article 5). Advance fee brokerage activities are defined in Section 10131.2. Mobilehome sales activities requiring broker licensure are described in Section 10131.6 and Prepaid Rental Listing Services provisions are found in Sections 10167-10167.17. Mineral, oil and gas property dealings requiring a broker license can be found in Sections 10131.4 and 10131.45. Section 10132 of the Code defines a real estate salesperson and the acts requiring licensure and employment by a real estate broker.

Without a license, an individual cannot receive compensation for the performance of any of the acts defined as being within the purview of a licensed broker or salesperson. In addition, the law provides penalties for a person who acts or purports to act as a real estate broker or salesperson without being duly licensed. The Commissioner may levy a fine against any real estate broker who is found in a disciplinary hearing to have compensated an unlicensed person for performing activities which require a real estate license. Furthermore, any person who compensates a nonlicensee for performing services which require a license is guilty of a misdemeanor and may also be fined by the courts. (Sections 10138, 10139, 10139.5 of the Code)

Exemptions From License Requirements

Exemptions to the license requirement include: resident managers of apartment buildings and complexes or their employees; short-term (vacation) rental agents; employees of certain lending institutions; employees of real estate brokers for specific, limited functions; lenders making loans guaranteed or insured by an agency of the federal government; certain agricultural associations; licensed personal property brokers; cemetery authorities; certain collectors of payments for lenders or on notes for owners in connection with loans secured directly or collaterally by liens on real property, provided such collectors annually meet exemption criteria; clerical help, etc.

License Law

COLORADO REAL ESTATE LICENSE LAW

TITLE 12, ARTICLE 61, C.R.S., AS AMENDED PART 1

12-61-101. Definitions.

As used in this part I, unless the context otherwise requires:

- (1) "Employing real estate broker" or "employing broker" means a broker who is shown in real estate commission records as employing or engaging another broker.
- (1.3) "Limited liability company" shall have the same meaning as it is given in section 7-80-102 (7), C.R.S.
- (1.5) "Option dealer" means any person, firm, partnership, limited liability company association, or corporation who, directly or indirectly, takes, obtains, or uses an option to purchase, exchange, rent, or lease real property or any interest therein with the intent or for the purpose of buying, selling, exchanging, renting, or leasing said real property or interest therein to another or others whether or not said option is in that person's or its name and whether or not title to said property passes through the name of said person, firm, partnership, limited liability company, association, or corporation in connection with the purchase, sale, exchange, rental, or lease of said real property or interest therein.
- (1.7) "Partnership" includes, but is not limited to, a registered limited liability partnership.
- (2) "Real estate broker" or "broker" means any person, firm, partnership, limited liability company, association, or corporation who, in consideration of compensation by fee, commission, salary, or anything of value or with the intention, of receiving or collecting such compensation, engages in or offers or attempts to engage in, either directly or indirectly, by a continuing course of conduct or by any single act or transaction, any of the following acts:
 - (a) Selling, exchanging, buying, renting, or leasing real estate, or interest therein, or improvements affixed thereon;
 - (b) Offering to sell, exchange, buy, rent, or lease real estate, or interest therein, or improvements affixed thereon;
 - (c) Selling or offering to sell or exchange an existing lease of real estate, or interest therein, or improvements affixed thereon;
 - (d) Negotiating the purchase, sale, or exchange of real estate, or interest therein, or improvements affixed thereon;
 - (e) Listing, offering, attempting, or agreeing to list real estate, or interest therein, or improvements affixed thereon for sale, exchange, rent, or lease;

- (f) Auctioning or offering, attempting, or agreeing to auction real estate, or interest therein, or improvements affixed thereon;
 - (g) Buying, selling, offering to buy or sell, or otherwise dealing in options on real estate, or interest therein, or improvements affixed thereon or acting as an "option dealer";
 - (h) Performing any of the foregoing acts as an employee of, or in behalf of, the owner of real estate, or interest therein, or improvements affixed thereon at a salary or for a fee, commission, or other consideration;
 - (i) Negotiating or attempting or offering to negotiate the listing, sale, purchase, exchange, or lease of a business or business opportunity or the goodwill thereof or any interest therein when such act or transaction involves, directly or indirectly, any change in the ownership, or interest in real estate, or in a leasehold interest or estate, or in a business or business opportunity which owns an interest in real estate or in a leasehold unless such act is performed by any broker-dealer licensed under the provisions of article 51 of title 11, C.R.S., who is actually engaged generally in the business of offering, selling, purchasing, or trading in securities or any officer, partner, salesperson, employee, or other authorized representative or agent thereof;
 - (j) Soliciting a fee or valuable consideration from a prospective tenant for furnishing information concerning the availability of real property, including apartment housing which may be leased or rented as a private dwelling, abode, or place of residence. Any person, firm, partnership, limited liability company, association, or corporation or any employee or authorized agent thereof engaged in the act of soliciting a fee or valuable consideration from any person other than a prospective tenant for furnishing information concerning the availability of real property, including apartment housing which may be leased or rented as a private dwelling, abode, or place of residence, is exempt from this definition of "real estate broker" or "broker". This exemption applies only in respect to the furnishing of information concerning the availability of real property.
- (3) "Real estate salesperson" or "salesperson" means any person employed or engaged by or on behalf of a licensed real estate broker to do or deal in any activity of a real estate broker, as defined in subsection (1.5) or (2) of this section, for compensation or otherwise.
- (4) "Real estate salesperson" or "real estate broker" does not apply to any of the following:

- (a) Any attorney-in-fact acting without compensation under a power of attorney, duly executed by an owner of real estate, authorizing the consummation of a real estate transaction;
- (b) Any public official in the conduct of his official duties;
- (c) Any receiver, trustee, administrator, conservator, executor, or guardian acting under proper authorization;
- (d) Any person, firm, partnership, limited liability company, or association acting personally or a corporation acting through its officers or regular salaried employees on behalf of that person or on its own behalf as principal in acquiring or in negotiating to acquire any interest in real estate;
- (e) An attorney-at-law in connection with his representation of clients in the practice of law;
- (f) Any person, firm, partnership, limited liability company, association or corporation or any employee or authorized agent thereof engaged in the act of negotiating, acquiring, purchasing, assigning, exchanging, selling, leasing, or dealing in oil and gas or other mineral leases or interests therein or other severed mineral or royalty interests in real property, including easements, rights-of-way, permits, licenses, and any other interests in real property for or on behalf of a third party, for the purposes of, or facilities related to, intrastate and interstate pipelines for oil, gas, and other petroleum products, flow lines, gas gathering systems and natural gas storage and distribution;
- (g) A natural person acting personally with respect to property owned or leased by that person or a natural person who is a general partner of a partnership, a manager of a limited liability company, or an owner of twenty percent or more of such partnership, or limited liability company, and authorized to sell or lease property owned by such partnership or limited liability company, except as provided in subsection (1.5) of this section;
- (h) A corporation with respect to property owned or leased by it, acting through its officers or regular salaried employees, when such acts are incidental and necessary in the ordinary course of the corporation's business activities of a non real estate nature (but only if the corporation is not engaged in the business of land transactions), except as provided in subsection (1.5) of this section. For the purposes of this paragraph (h), the term "officers or regular salaried employees" means persons regularly employed who derive not less than seventy-five percent of their compensation from the corporation in the form of salaries;
- (i) A principal officer of any corporation with respect to property owned by it when such property is located within the state of

Colorado and when such principal officer is the owner of twenty percent or more of the outstanding stock of such corporation, except as provided in subsection (1.5) of this section, but this exemption does not include any corporation selling previously occupied one-family and two-family dwellings;

- (j) A sole proprietor, corporation, partnership, or limited liability company, acting through its officers or partners, or through regular salaried employees, with respect to property owned or leased by such sole proprietor, corporation, partnership, or limited liability company on which has been or will be erected a commercial, industrial, or residential building which has not been previously occupied and where the consideration paid for such property includes the cost of such building, payable, less deposit or down payment, at the time of conveyance of such property and building;
- (k) A corporation, partnership, or limited liability company, acting through its officers, partners, managers, or regularly salaried employees receiving no additional compensation therefore, or its wholly owned subsidiary or officers, partners, managers or regular salaried employees thereof receiving no additional compensation, with respect to property located in Colorado which is owned or leased by such corporation, partnership, or limited liability company and on which has been or will be erected a shopping center, office building, or industrial park when such shopping center, office building, or industrial park is sold, leased or otherwise offered for sale or lease in the ordinary course of the business of such corporation, partnership, limited liability company or wholly owned subsidiary. For the purpose of this paragraph (k), "shopping center" means land on which buildings are or will be constructed which are used for commercial and office purposes around or adjacent to which off-street parking is provided; "office building" means a building used primarily for office purposes; and "industrial park" means land on which buildings are or will be constructed for warehouse, research, manufacturing, processing, or fabrication purposes.
- (l) A regularly salaried employee of an owner of an apartment building or complex who acts as an on-site manager of such an apartment building or complex. This exemption applies only in respect to the customary duties of an on-site manager performed for his employer. (*Ed. Note: See also Rule C-24*)
- (m) A regularly salaried employee of an owner of condominium units who acts as an on-site manager of such units. For purposes of this paragraph (m) only, the term "owner" includes a homeowners' association formed and acting pursuant to its recorded condominium

declaration and bylaws. This exemption applies only in respect to the customary duties of an on-site manager performed for his employer;

- (n) A real estate broker licensed in another state who receives a share of a commission or finder's fee on a cooperative transaction from a licensed Colorado real estate broker;
- (o) Repealed (effective 4-19-94)
- (p) A sole proprietor, corporation, partnership, or limited liability company, acting through its officers, partners, or regularly salaried employees, with respect to property located in Colorado, where the purchaser of such property is in the business of developing land for residential, commercial, or industrial purposes.
- (q) Any person, firm, partnership, limited liability company, association, or corporation or any employee or authorized agent thereof, engaged in the act of negotiating, purchasing, assigning, exchanging, selling, leasing, or acquiring rights-of-way, permits, licenses, and any other interests in real property for or on behalf of a third party for the purpose of, or facilities related to:
 - (I) Telecommunication lines;
 - (II) Wireless communication facilities;
 - (III) CATV;
 - (IV) Electric generation, transmissions, and distribution lines;
 - (V) Water diversion, collection, distribution, treatment, and storage or use; and
 - (VI) Transportation, so long as such person, firm, partnership, limited liability company, association, or corporation including any employee or authorized agent thereof does not represent any displaced person or entity as an agent thereof in the purchase, sale, or exchange of real estate, or an interest therein, resulting from residential or commercial relocations required under any transportation project, regardless of the source of public funding.

12-61-102. License required.

It is unlawful for any person, firm, partnership, limited liability company, association, or corporation to engage in the business or capacity of real estate broker or real estate salesperson in this state without first having obtained a license from the real estate commission. No person shall be granted a license until such person establishes compliance with the provisions of this part 1 concerning education, experience, and testing; truthfulness and honesty and otherwise of good moral character; and in addition to any other requirements of this section, competency to transact the business of a real estate broker or real estate salesperson in such manner as to safeguard the interest of the public and

only after satisfactory proof of such qualifications, together with the application for such license, is filed in the office of the commission. In determining such person's character, the real estate commission shall be governed by the provisions of section 24-5-101, C.R.S.

12-61-103. Application for license.

- (1) (a) All persons desiring to become real estate brokers shall apply to the real estate commission for a license under the provisions of this part 1. Application for a license, as a real estate broker shall be made to the commission upon forms or in a manner prescribed by it.
- (b) (I) With the submission of an application for a license pursuant to paragraph (a) of this subsection (1), each applicant shall submit a set of fingerprints to the real estate commission. The commission shall forward such fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. (*Ed. Note: See Rule A-16.*)
- (II) For purposes of this paragraph (b), "applicant" means an individual, or any person designated to act as broker for any partnership, limited liability company, or corporation pursuant to subsection (7) of this section.
- (2) Every real estate broker licensed under this part 1 shall maintain a place of business within this state, except as provided in section 12-61-107. In case a real estate broker maintains more than one place of business within the state, the broker shall be responsible for supervising all licensed activities originating in such offices.
- (3) The commission is authorized by this section to require and procure any such proof as is necessary in reference to the truthfulness, honesty, and good moral character of any applicant for a real estate broker's license or, if the applicant is a partnership, limited liability company or corporation, of any partner, manager, director, officer, member, or stockholder if such person has, either directly or indirectly, a substantial interest in such applicant prior to the issuance of such license.
- (4) (a) An applicant for a broker's license shall be at least eighteen years of age. The applicant must furnish proof satisfactory to the commission that the applicant has either received a degree from an accredited degree-granting college or university with a major course of study in real estate or has successfully completed courses of study, approved by the commission, at any accredited degree granting college or university or any private occupational school that has a certificate of approval from the private occupational school division in accordance with the provisions of article 59 of this section or that has been approved by the commission or licensed by an official state agency of any other state as follows:

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TITLE 24

Professions and Occupations

CHAPTER 29. REAL ESTATE BROKERS, SALESPERSONS AND APPRAISERS

Subchapter I. General Provisions

§ 2901. Definitions and exceptions.

(a) As used in this chapter:

(1) "Appraisal assignment" means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased appraisal.

(2) "Real estate broker" means any person who, for a compensation or valuable consideration, sells or offers for sale, buys or offers to buy, or negotiates a purchase, 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, but shall not include an auctioneer as defined in § 2301(a)(3) of Title 30.

(3) "Real estate salesperson" means 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 to offer to buy, or to negotiate the purchase or sale or exchange of real estate, or to lease or rent or offer for rent any real estate, or to negotiate leases thereof or of the improvements thereon, as a whole or partial vocation, but shall not include an auctioneer as defined in § 2301(a)(3) of Title 30.

(4) "Disposition of land" or "disposition" shall mean any sale, exchange, lease, assignment, award by lottery or other transaction designed to convey an interest in a subdivision or in a lot, piece or parcel of land when undertaken for gain or profit.

(5) "Subdivision" shall mean any improved or unimproved land or tract of land including land located outside this State which is divided or proposed to be divided into 5 or more lots, parcels, unit properties or interests for the purpose of disposition, at any time as part of a common promotional plan. Any land which is under common ownership or which is controlled by a single developer or group of developers acting in concert, is contiguous in area, and is designated or advertised as a common unit or known by a common name, shall be presumed, without regard to the number of lots, parcels, units or

interests covered by each individual offering, to be part of a common promotional plan.

(6) "Commission" shall mean the Delaware Real Estate Commission.

(7) "Substantially related" means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of real estate brokering, real estate sales or real estate appraisal.

(b) This chapter shall not apply to:

(1) Any person who, as owner or lessor, performs any of the acts enumerated in this section with reference to property owned or leased by such person or to the regular employee 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; or

(2) Persons acting as attorney in fact under a duly executed power of attorney from the owner authorizing the final consummation by performance of any contract of sale, leasing or exchange of real estate.

(c) This chapter shall not be construed to include in any way the services rendered by an attorney-at-law, nor shall it be held to include, while acting as such, the receiver, trustee in bankruptcy, administrator or executor; or any person selling real estate under order of any court, or a trustee acting under a trust agreement, deed of trust or will, or the regular salaried employee thereof. (35 Del. Laws, c. 63, § 4; Code 1935, § 5476; 24 Del. C. 1953, § 2901; 57 Del. Laws, c. 151; 59 Del. Laws, c. 468, § 2; 67 Del. Laws, c. 121, §§ 1, 2, 23; 67 Del. Laws, c. 381, §§ 2, 9; 67 Del. Laws, c. 438, §§ 1, 2; 74 Del. Laws, c. 262, § 54.)

§ 2902. Real Estate Commission; appointment; qualifications; terms of office; vacancies; compensation.

(a) The Delaware Real Estate Commission shall consist of 9 members appointed by the Governor: 5 professional members, 4 of whom shall be licensed real estate brokers, and 1 salesperson; and 4 public members. All members shall have been residents of the State for 5 years immediately prior to such appointment.

(1) Four of the professional members shall be brokers: 1 shall be a resident of New Castle County; 1 shall be a resident of Kent County; 1 shall be a resident of Sussex County; and 1 shall maintain an office in the City of Wilmington. Broker members of the Commission shall have been active brokers or salespersons for 5 years immediately prior to their appointment.

(2) One of the professional members shall be a salesperson. The salesperson member shall have been an active salesperson for 4 years immediately prior to his/her appointment.

(3) Of the 4 public members, at least 1 public member shall be from each county. To serve on the Commission, a public member shall not be, nor have been within the last 8 years of the effective date of appointment, a real estate salesperson or broker, nor a member of the immediate family of a salesperson or broker; shall not be, nor have been within the last 8 years of the effective date of appointment, employed by a real estate broker; shall not have had a financial interest in the providing of goods and services to a real estate broker or salesperson; and shall not be, nor have been within the last 8 years of the effective date of appointment, engaged in an activity directly related to the real estate profession. Such public member shall be accessible to inquiries, comments and suggestions from the general public.

Florida

475.01 Definitions.--

(1) As used in this part:

(a) "Broker" means a person who, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor, appraises, auctions, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, auction, or negotiate the sale, exchange, purchase, or rental of business enterprises or business opportunities or any real property or any interest in or concerning the same, including mineral rights or leases, or who advertises or holds out to the public by any oral or printed solicitation or representation that she or he is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing, or renting business enterprises or business opportunities or real property of others or interests therein, including mineral rights, or who takes any part in the procuring of sellers, purchasers, lessors, or lessees of business enterprises or business opportunities or the real property of another, or leases, or interest therein, including mineral rights, or who directs or assists in the procuring of prospects or in the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange, or leasing thereof, and who receives, expects, or is promised any compensation or valuable consideration, directly or indirectly therefor; and all persons who advertise rental property information or lists. A broker renders a professional service and is a professional within the meaning of s. 95.11(4)(a). Where the term "appraise" or "appraising" appears in the definition of the term "broker," it specifically excludes those appraisal services which must be performed only by a state-licensed or state-certified appraiser, and those appraisal services which may be performed by a registered trainee appraiser as defined in part II. The term "broker" also includes any person who is a general partner, officer, or director of a partnership or corporation which acts as a broker. The term "broker" also includes any person or entity who undertakes to list or sell one or more timeshare periods per year in one or more timeshare plans on behalf of any number of persons, except as provided in ss. 475.011 and 721.20.

(b) "Broker associate" means a person who is qualified to be issued a license as a broker but who operates as a sales associate in the employ of another.

(c) "Commission" means the Florida Real Estate Commission.

(d) "Customer" means a member of the public who is or may be a buyer or seller of real property and may or may not be represented by a real estate licensee in an authorized brokerage relationship.

(e) "Department" means the Department of Business and Professional Regulation.

(f) "Fiduciary" means a broker in a relationship of trust and confidence between that broker as agent and the seller or buyer as principal. The duties of the broker as a fiduciary are loyalty, confidentiality, obedience, full disclosure, and accounting and the duty to use skill, care, and diligence.

(g) "Involuntarily inactive status" means the licensure status that results when a license is not renewed at the end of the license period prescribed by the department.

(h) "Principal" means the party with whom a real estate licensee has entered into a single agent relationship.

(i) "Real property" or "real estate" means any interest or estate in land and any interest in business enterprises or business opportunities, including any assignment, leasehold, subleasehold, or mineral right; however, the term does not include any cemetery lot or right of burial in any cemetery; nor does the term include the renting of a mobile home lot or recreational vehicle lot in a mobile home park or travel park.

(j) "Sales associate" means a person who performs any act specified in the definition of "broker," but who performs such act under the direction, control, or management of another person. A sales associate renders a professional service and is a professional within the meaning of s. 95.11(4)(a).

(k) "Single agent" means a broker who represents, as a fiduciary, either the buyer or seller but not both in the same transaction.

(l) "Transaction broker" means a broker who provides limited representation to a buyer, a seller, or both, in a real estate transaction, but does not represent either in a fiduciary capacity or as a single agent. In a transaction broker relationship, a buyer or seller is not responsible for the acts of a licensee. Additionally, the parties to a real estate transaction are giving up their rights to the undivided loyalty of a licensee. This aspect of limited representation allows a licensee to facilitate a real estate transaction by assisting both the buyer and the seller, but a licensee will not work to represent one party to the detriment of the other party when acting as a transaction broker to both parties.

(m) "Voluntarily inactive status" means the licensure status that results when a licensee has applied to the department to be placed on inactive status and has paid the fee prescribed by rule.

(2) The terms "employ," "employment," "employer," and "employee," when used in this chapter and in rules adopted pursuant thereto to describe the relationship between a broker and a sales associate, include an independent contractor relationship when such relationship is intended by and established between a broker and a sales associate. The existence of such relationship shall not relieve either the broker or the sales associate of her or his duties, obligations, or responsibilities under this chapter.

(3) Wherever the word "operate" or "operating" as a broker, broker associate, or sales associate appears in this chapter; in any order, rule, or regulation of the commission; in any pleading, indictment, or information under this chapter; in any court action or proceeding; or in any order or judgment of a court, it shall be deemed to mean the commission of one or more acts described in this chapter as constituting or defining a broker, broker associate, or sales associate, not including, however, any of the exceptions stated therein. A single such act is sufficient to bring a person within the meaning of this

chapter, and each act, if prohibited herein, constitutes a separate offense.

(4) A broker acting as a trustee of a trust created under chapter 689 is subject to the provisions of this chapter unless the trustee is a bank, state or federal association, or trust company possessing trust powers as defined in s. 658.12(23).

History.--s. 1, ch. 12223, 1927; CGL 4062; s. 1, ch. 29983, 1955; s. 1, ch. 59-199; s. 1, ch. 59-197; s. 1, ch. 59-438; ss. 30, 35, ch. 69-106; s. 1, ch. 75-112; s. 7, ch. 75-184; s. 3, ch. 76-168; s. 1, ch. 77-239; s. 1, ch. 77-355; s. 1, ch. 77-457; s. 1, ch. 78-215; s. 1, ch. 78-366; ss. 2, 42, 43, ch. 79-239; ss. 2, 3, 5, ch. 80-405; ss. 2, 3, ch. 81-318; ss. 5, 38, ch. 82-1; ss. 18, 45, ch. 82-179; ss. 1, 28, 30, ch. 88-20; s. 1, ch. 89-368; s. 10, ch. 90-228; s. 10, ch. 90-341; s. 13, ch. 90-345; ss. 2, 10, ch. 91-89; s. 1, ch. 91-289; s. 4, ch. 91-429; s. 2, ch. 93-261; s. 134, ch. 94-119; s. 159, ch. 94-218; s. 1, ch. 94-337; s. 1, ch. 97-42; s. 361, ch. 97-103; s. 1, ch. 98-250; s. 1, ch. 99-384; s. 1, ch. 2002-233; ss. 1, 22, ch. 2003-164; s. 78, ch. 2004-5.

339.010. Definitions--applicability of chapter.

1. A "real estate broker" is any person, partnership, association or corporation, foreign or domestic who, for another, and for a compensation or valuable consideration, as a whole or partial vocation, does, or attempts to do, any or all of the following:
 - (1) Sells, exchanges, purchases, rents, or leases real estate;
 - (2) Offers to sell, exchange, purchase, rent or lease real estate;
 - (3) Negotiates or offers or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate;
 - (4) Lists or offers or agrees to list real estate for sale, lease, rental or exchange;
 - (5) Buys, sells, offers to buy or sell or otherwise deals in options on real estate or improvements thereon;
 - (6) Advertises or holds himself or herself out as a licensed real estate broker while engaged in the business of buying, selling, exchanging, renting, or leasing real estate;
 - (7) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate;
 - (8) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate;
 - (9) Engages in the business of charging to an unlicensed person an advance fee in connection with any contract whereby the real estate broker undertakes to promote the sale of that person's real estate through its listing in a publication issued for such purpose intended to be circulated to the general public;
 - (10) Performs any of the foregoing acts as an employee of, or on behalf of, the owner of real estate, or interest therein, or improvements affixed thereon, for compensation.
2. A "real estate salesperson" is any person, who for a compensation or valuable consideration becomes associated, either as an independent contractor or employee, either directly or indirectly, with a real estate broker to do any of the things above mentioned, as a whole or partial vocation. The provisions of sections 339.010 to 339.180 shall not be construed to deny a real estate salesperson who is compensated solely by commission the right to be associated with a broker as an independent contractor.
3. The term "commission" as used in sections 339.010 to 339.180 means the Missouri real estate commission.
4. "Real estate" for the purposes of sections 339.010 to 339.180 shall mean, and include, leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold, and whether the real estate is situated in this state or elsewhere.
5. The provisions of sections 339.010 to 339.180 shall not apply to:
 - (1) Any person, partnership or corporation who as owner or lessor shall perform any of the acts described in subsection 1 of this section with reference to property owned or leased by them, or to the regular employees thereof, provided such owner or lessor is not engaged in the real estate business as a vocation;
 - (2) Any licensed attorney-at-law;
 - (3) An auctioneer employed by the owner of the property;
 - (4) Any person acting as receiver, trustee in bankruptcy, administrator, executor, or guardian or while acting under a court order or under the authority of a will, trust instrument or deed of trust or as a witness in any judicial proceeding or other proceeding conducted by the state or any governmental subdivision or agency;
 - (5) Any person employed or retained to manage real property by, for, or on behalf of, the agent or the owner, of any real estate shall be exempt from holding a license, if the person is limited to one or more of the following activities:
 - (a) Delivery of a lease application, a lease, or any amendment thereof, to any person;
 - (b) Receiving a lease application, lease, or amendment thereof, a security deposit, rental payment, or any related payment, for delivery to, and made payable to, a broker or owner;
 - (c) Showing a rental unit to any person, as long as the employee is acting under the direct instructions of the broker or owner, including the execution of leases or rental agreements;
 - (d) Conveying information prepared by a broker or owner about a rental unit, a lease, an application for lease, or the status of a security deposit, or the payment of rent, by any person;
 - (e) Assisting in the performance of brokers' or owners' functions, administrative, clerical or maintenance tasks;
 - (f) If the person described in this section is employed or retained by, for, or on behalf of a real estate broker, the real estate broker shall be subject to discipline under this chapter for any conduct of the person that violates this chapter or the regulations promulgated thereunder;
 - (6) Any officer or employee of a federal agency or the state government or any political subdivision thereof performing official duties;
 - (7) Railroads and other public utilities regulated by the state of Missouri, or their subsidiaries or affiliated corporations, or to the officers or regular employees thereof, unless performance of any of the acts described in subsection 1 of this section is in connection with the sale, purchase, lease or other disposition of real estate or investment therein unrelated to the principal business activity of such railroad or other public utility or affiliated or subsidiary corporation thereof;
 - (8) Any bank, trust company, savings and loan association, credit union, insurance company, mortgage banker, or farm loan association organized under the laws of this state or of the United States when engaged in the transaction of business on its own behalf and not for others;
 - (9) Any newspaper or magazine or periodical of general circulation whereby the advertising of real estate is incidental to the operation of that publication or to any form of communications regulated or licensed by the Federal

Communications Commission or any successor agency or commission;

- (10) Any developer selling Missouri land owned by the developer if such developer has on file with the commission a certified copy of a currently effective statement of record on file with the Office of Interstate Land Sales pursuant to Sections 1704 through 1706 of Title 15 of the United States Code or a current statement from the Office of Interstate Land Sales of the United States Department of Housing and Urban Development approving the documentation (together with a copy of such documentation) submitted to that office with respect to real estate falling within the scope of subsection 1702(a)(10) of Title 15 of the United States Code;
- (11) Any employee acting on behalf of a nonprofit community, or regional economic development association, agency or corporation which has as its principal purpose the general promotion and economic advancement of the community at large, provided that such entity:
 - (a) Does not offer such property for sale, lease, rental or exchange on behalf of another person or entity;
 - (b) Does not list or offer or agree to list such property for sale, lease, rental or exchange; or
 - (c) Receives no fee, commission or compensation, either monetary or in kind, that is directly related to sale or disposal of such properties. An economic developer's normal annual compensation shall be excluded from consideration as commission or compensation related to sale or disposal of such properties; or
- (12) Any neighborhood association, as that term is defined in section 441.500, RSMo, that without compensation, either monetary or in kind, provides to prospective purchasers or lessors of property the asking price, location, and contact information regarding properties in and near the association's neighborhood, including any publication of such information in a newsletter, web site, or other medium.

339.020. Brokers and salespersons, unlawful to act without license.

It shall be unlawful for any person, partnership, association or corporation, foreign or domestic, to act as a real estate broker or real estate salesperson, or to advertise or assume to act as such without a license first procured from the commission.

339.030. Business entities may be licensed, when, fee.

A corporation, partnership or association shall be granted a license when individual licenses have been issued to every member, partner or officer of such partnership, association or corporation who actively participates in its brokerage business and to every person who acts as a salesperson for such partnership, association or corporation and when the required fee is paid.

339.040. Licenses granted to whom--examination--qualifications--fee --temporary broker's license, when--renewal, requirements.

1. Licenses shall be granted only to persons who present, and corporations, associations or partnerships whose officers, associates, or partners present, satisfactory proof to the commission that they:
 - (1) Are persons of good moral character; and
 - (2) Bear a good reputation for honesty, integrity, and fair dealing; and
 - (3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.
2. In order to determine an applicant's qualifications to receive a license under sections 339.010 to 339.180, the commission shall hold oral or written examinations at such times and places as the commission may determine.
3. Each applicant for a broker or salesperson license shall be at least eighteen years of age and shall pay the broker examination fee or the salesperson examination fee.
4. Each applicant for a broker license shall be required to have satisfactorily completed the salesperson license examination prescribed by the commission. For the purposes of this section only, the commission may permit a person who is not associated with a licensed broker to take the salesperson examination.
5. Each application for a broker license shall include a certificate from the applicant's broker or brokers that the applicant has been actively engaged in the real estate business as a licensed salesperson for at least one year immediately preceding the date of application, or, in lieu thereof, shall include a certificate from a school accredited by the commission under the provisions of section 339.045 that the applicant has, within six months prior to the date of application, successfully completed the prescribed broker curriculum or broker correspondence course offered by such school, except that the commission may waive all or part of the educational requirements set forth in this subsection when an applicant presents proof of other educational background or experience acceptable to the commission.
6. Each application for a salesperson license shall include a certificate from a school accredited by the commission under the provisions of section 339.045 that the applicant has, within six months prior to the date of application, successfully completed the prescribed salesperson curriculum or salesperson correspondence course offered by such school, except that the commission may waive all or part of the educational requirements set forth in this subsection when an applicant presents proof of other educational background or experience acceptable to the commission.
7. The commission shall require every active broker, salesperson, officer or partner to present upon license renewal evidence that during the two years preceding he has completed twelve hours of real estate instruction in courses approved by the commission. The commission may, by rule and regulation, provide for individual waiver of this requirement.
8. Each entity that provides continuing education required under the provisions of subsection 7 of this section may make available videotapes and audiotapes of instruction courses that the entity conducts. The commission shall by rule set standards for the production of such taped courses, which may include the requirement that individuals purchasing such

tapes also purchase an accompanying written study document. The commission shall authorize individuals required to complete instruction under the provisions of this subsection to fulfill such continuing education requirements by utilizing such videotape and audiotape courses. The commission may by regulation require the individual completing such videotape or audiotape course to complete an examination on the contents of the course. Such examination shall be designed to ensure that the licensee displays adequate knowledge of the subject matter of the course, and shall be designed by the entity producing the taped course and approved by the commission.

9. In the event of the death or incapacity of a licensed broker, or of one or more of the licensed partners or officers of a real estate partnership or corporation whereby the affairs of the broker, partnership, or corporation cannot be carried on, the commission may issue, without examination or fee, to the legal representative or representatives of the deceased or incapacitated individual, or to another individual approved by the commission, a temporary broker license which shall authorize such individual to continue for a period to be designated by the commission to transact business for the sole purpose of winding up the affairs of the broker, partnership or corporation under the supervision of the commission.

339.045. Real estate schools--accreditation--registration--fee, how determined.

1. An institution or organization desiring to conduct a school or offer a course of instruction to prepare persons to be licensed under this chapter, or to offer post-licensure courses, shall apply to the commission for accreditation, and shall submit evidence that it is prepared to carry out a prescribed minimum curriculum in real estate principles and practices and can meet other standards established by the commission. An investigation of the school and of the institution or organization with which such school is affiliated shall be made by the executive secretary or other authorized representative of the commission, who shall submit a written report of the investigation to the commission. If, in the opinion of the commission, the requirements for an accredited school for instruction in real estate principles and practices are met, the commission shall approve the school as an accredited real estate school upon payment of a fee in an amount to be set by the commission. All schools so accredited shall register at required intervals on a form provided and pay the required registration fee fixed by the commission.
2. The commission shall prescribe minimum curricula and standards for accreditation of real estate schools, courses of instruction preparing persons to be licensed under this chapter and courses offered for post-licensure credit.
3. From time to time as deemed necessary by the commission it shall be the duty of the commission through its executive secretary or other authorized representative to survey all accredited real estate schools operated in this state. If the commission determines that any accredited real estate school is not maintaining the standards required by the commission, notices thereof in writing specifying the defect or defects shall be given immediately to the school. The commission may file a complaint with the administrative hearing commission if a school fails to correct these conditions to the satisfaction of the commission within thirty days, or such longer period as may be authorized in writing by the commission. The hearing and any subsequent suspension or revocation of accreditation shall be governed by chapter 621, RSMo.
4. No member of the commission, nor any relative within the fourth degree of consanguinity or affinity, nor any member or employee of the commissioner's firm or business entity, shall have any economic interest in, receive remuneration from, or teach or solicit customers for any real estate school or courses of instruction as heretofore described in this chapter.

339.050. Form of application.

Applications for licenses shall be in writing, on blanks furnished by the commission, accompanied by such information and recommendations as it may require. Each application shall contain a statement that it is made under oath or affirmation and that its representations are true and correct to the best knowledge and belief of the person signing same, subject to the penalties of making a false affidavit or declaration.

339.060. Fees, amount, set how--term of licenses.

1. The commission shall set the amount of the fees which sections 339.010 to 339.180 authorize and require by rules and regulations promulgated pursuant to section 536.021, RSMo. The fees shall be set at a level to produce revenue which shall not substantially exceed the cost and expense of administering sections 339.010 to 339.180.
2. Every license granted under sections 339.010 to 339.180 shall be renewed each licensing period and the commission shall issue a new license upon receipt of the written application of the applicant and the required renewal fee.

339.070. Fees, collection and disposition--fund, source, use, transferred to general revenue, when.

1. All fees and charges payable under this chapter shall be collected by the division of professional registration and transmitted to the department of revenue for deposit in the state treasury to the credit of the "Real Estate Commission Fund". No money shall be paid out of this fund except by an appropriation by the general assembly. Warrants shall be issued monthly, upon the state treasurer out of this fund only, for the payment of the salaries and all necessary expenses of the commission. Vouchers for salaries and expenses shall be first approved by the commission. The total expense for every purpose incurred by the commission shall not exceed the total fees and charges collected and paid into the state treasury.
2. The provisions of section 33.080, RSMo, to the contrary notwithstanding, money in this fund shall not be transferred and placed to the credit of general revenue until the amount in the fund at the end of the biennium exceeds two times the

§ 34-27-30. Required.

It shall be unlawful for any person, partnership, corporation, or branch office, for a fee, commission or other valuable consideration, or with the intention or expectation of receiving or collecting a fee, commission or other valuable consideration from another, to do any of the following unless he is licensed under Articles 1 and 2 of this chapter:

- (1) Sell, exchange, purchase, rent, or lease real estate;
- (2) Offer to sell, exchange, purchase, rent, or lease real estate;
- (3) Negotiate or attempt to negotiate the listing, sale, exchange, purchase, rental, or leasing of real estate;
- (4) List or offer or attempt or agree to list real estate for sale, rental, lease, exchange, or trade;
- (5) Auction, offer or attempt or agree to auction, real estate;
- (6) Buy or sell or offer to buy or sell, or otherwise deal in options on real estate;
- (7) Aid, attempt, or offer to aid in locating or obtaining for purchase, rent, or lease any real estate;
- (8) Procure or assist in procuring of prospects for the purpose of effecting the sale, exchange, lease, or rental of real estate;
- (9) Procure or assist in the procuring of properties for the purpose of effecting the sale, exchange, lease or rental of real estate; or
- (10) Present himself or be presented as being able to perform an act for which a license is required.

(Acts 1951, No. 422, p. 745, § 2; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 1; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

Cross references

See RULE 790-X-1.03.

Article 02.
LICENSING.

Section

- 161. License required
- 165. Conduct of auctions
- 167. Civil penalty for unlicensed or unauthorized practice
- 171. Eligibility for license
- 173. Fidelity bond for community association managers
- 175. Limitations on community association managers
- 181. Content and purpose of examination
- 191. Administration of examination
- 201. Reexamination
- 221. Fees
- 241. Reinstatement of lapsed license
- 251. Inactive license

Sec. 08.88.161. License required. Unless licensed as a real estate broker, associate real estate broker, or real estate salesperson in this state, a person may not, except as otherwise provided in this chapter,

- (1) sell, exchange, rent, lease, auction, or purchase real estate;
- (2) list real estate for sale, exchange, rent, lease, auction, or purchase;
- (3) collect rent for the use of real estate or collect fees for property management;
- (4) practice, or negotiate for a contract to practice, property management;
- (5) collect fees for community association management;
- (6) practice, or negotiate for a contract to practice, community association management;
- (7) as a business, buy, sell, or deal in
 - (A) options in real estate; or
 - (B) options in improvements to real estate;
- (8) assist in or direct the procuring of prospective buyers and sellers of real estate; communicate with prospective buyers and sellers of real estate, or assist in the negotiation of a transaction that results or is calculated to result in the sale, exchange, rent, lease, auction, or purchase of real estate;
- (9) accept or pay a fee for the performance of any of the activities listed in this section except as otherwise specifically provided in this chapter;
- (10) hold out to the public as being engaged in the business of doing any of the things listed in this section; or
- (11) attempt or offer to do any of the things listed in this section.

Sec. 08.88.165. Conduct of auctions. Notwithstanding AS 08.88.161, a person who is not licensed under this chapter may conduct an auction of real estate if

- (1) the person has completed an auctioneering program at a school certified by an agency of this or another state, and the program included a course on real estate sales; and
- (2) a real estate broker licensed under this chapter or an associate real estate broker licensed under this chapter supervises and is present during the auction.

Sec. 08.88.167. Civil penalty for unlicensed or unauthorized practice. (a) In addition to penalties prescribed by any other provision of law, if a person engages or offers to engage in an activity for which a license is required under AS 08.88.161 without being licensed or authorized to engage in the activity in accordance with the provisions of this chapter, the commission may enter an order levying a civil penalty.

(b) A civil penalty levied under this section may not exceed \$5,000, or the amount of gain realized plus \$5,000, whichever is greater, for each offense. In levying a civil penalty, the commission shall set the amount of the penalty imposed under this section after taking into account the seriousness of the violation, the economic benefit resulting from the violation, the history of violations, and other facts the commission considers relevant.

(c) Before entering an order under (a) of this section, the commission shall send the person written notice of the proposed order that grants the person a 30-day period during which the person may request a hearing on the record.

(d) In connection with proceedings under (a) - (c) of this section, the commission may issue subpoenas to compel the attendance and testimony of witnesses and the disclosure of evidence and may request the department to bring an action to enforce a subpoena.

(e) A person aggrieved by the levy of a civil penalty under this section may file an appeal with the superior court for judicial review of the penalty under AS 44.62.560.

(f) If a person fails to pay a civil penalty within 30 days after entry of an order under (a) of this section, or within 10 days after the court enters a final judgment in favor of the commission of an order stayed pending an appeal under (e) of this section, the commission may initiate other action to recover the amount of the penalty.

(g) An action to enforce an order under this section may be combined with an action for an injunction under AS 08.88.037.