

CHAPTER 205

[Substitute Senate Bill No. 6474]

REAL ESTATE BROKERS AND SALESPERSONS

AN ACT Relating to real estate brokers and salespersons; amending RCW 18.85.040, 18.85.095, 18.85.240, 18.85.251, and 18.85.271; reenacting and amending RCW 18.85.215 and 18.85.230; and adding a new section to chapter 18.85 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 18.85 RCW to read as follows:

All real estate brokers and salespersons shall furnish proof as the director may require that they have successfully completed a total of thirty clock hours of instruction every two years in real estate courses approved by the director in order to renew their licenses. Up to fifteen clock hours of instruction beyond the thirty hours in two years may be carried forward for credit in a subsequent two-year period. To count towards this requirement, a course shall be commenced within thirty-six months before the proof date for renewal. This section shall apply to renewal dates after January 1, 1991.

Sec. 2. Section 4, chapter 252, Laws of 1941 as last amended by section 2, chapter 332, Laws of 1987 and RCW 18.85.040 are each amended to read as follows:

The director, with the advice and approval of the commission, may issue rules and regulations to govern the activities of real estate brokers, associate real estate brokers and salespersons, consistent with this chapter, fix the times and places for holding examinations of applicants for licenses and prescribe the method of conducting them. The director shall enforce all laws, rules and regulations relating to the licensing of real estate brokers, associate real estate brokers, and salespersons, grant or deny licenses to real estate brokers, associate real estate brokers, and salespersons, and hold hearings ((and)). The director may impose any one or more of the following sanctions: Suspend or revoke licenses, ((or)) deny applications for licenses, ((or)) fine violators ((and may)), or require the completion of a course in a selected aspect of real estate practice relevant to the provision of this chapter or rule violated. The director may deny, suspend or revoke the authority of a broker to act as the designated broker of persons who commit violations of the real estate license law or of the rules and regulations. The director shall establish by rule standards for licensure of applicants licensed in other jurisdictions. The director shall institute a program of education for the benefit of the licensees and may institute a program of education at institutions of higher education in Washington. The director shall charge a fee, as prescribed by the director by rule, for the certification of courses of instruction, instructors, and schools.

Sec. 3. Section 7, chapter 139, Laws of 1972 ex. sess. as last amended by section 3, chapter 332, Laws of 1987 and RCW 18.85.095 are each amended to read as follows:

(1) It is hereby established that the minimum requirements for an individual to receive a salesperson's license are that the individual:

~~((1))~~ (a) Is eighteen years of age or older;

~~((2))~~ (b) Has passed a salesperson's examination; and

~~((3))~~ (c) Except as provided in RCW 18.85.097, has successfully completed a thirty clock hour course in real estate fundamentals prior to obtaining a first real estate license.

(2) Except as provided in RCW 18.85.097, no licensed salesperson shall have his or her license renewed a second time unless he or she furnishes proof, as the director may require, that he or she has successfully completed an additional thirty clock hours of instruction in real estate courses approved by the director. This subsection shall expire January 1, 1991.

Nothing in this section shall apply to persons who are licensed as salespersons under any real estate license law in Washington which exists prior to this law's enactment and whose license has not been subsequently revoked.

Sec. 4. Section 8, chapter 370, Laws of 1977 ex. sess. as last amended by section 17, chapter 332, Laws of 1987 and by section 1, chapter 514, Laws of 1987 and RCW 18.85.215 are each reenacted and amended to read as follows:

(1) Any license issued under this chapter and not otherwise revoked shall be deemed "inactive" at any time it is delivered to the director. Until reissued under this chapter, the holder of an inactive license shall be deemed to be unlicensed.

(2) An inactive license may be renewed on the same terms and conditions as an active license, ~~(and)~~ except that a person with an inactive license need not comply with the continuing education requirements of section 1 of this 1988 act. Failure to renew shall result in cancellation in the same manner as an active license.

(3) An inactive license may be placed in an active status upon completion of an application as provided by the director and upon compliance with this chapter and the rules adopted pursuant thereto. Subject to RCW 18.85.097, if a holder has an inactive license for more than three years, the holder must show proof of successfully completing a thirty clock hour course in real estate within one year prior to the application for active status. Holders employed by the state and conducting real estate transactions on behalf of the state are exempt from this course requirement.

(4) The provisions of this chapter relating to the denial, suspension, and revocation of a license shall be applicable to an inactive license as well as an active license, except that when proceedings to suspend or revoke an

inactive license have been initiated, the license shall remain inactive until the proceedings have been completed.

Sec. 5. Section 4, chapter 25, Laws of 1979 as amended by section 9, chapter 332, Laws of 1987 and by section 15, chapter 370, Laws of 1987 and RCW 18.85.230 are each reenacted and amended to read as follows:

The director may, upon his or her own motion, and shall upon verified complaint in writing by any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate broker, associate real estate broker, or real estate salesperson, regardless of whether the transaction was for his or her own account or in his or her capacity as broker, associate real estate broker, or real estate salesperson, and may impose any one or more of the following sanctions: Suspend or revoke, ((or)) levy a fine not to exceed one thousand dollars for each offense, require the completion of a course in a selected area of real estate practice relevant to the section of this chapter or rule violated, or deny the license of any holder or applicant who is guilty of:

(1) Obtaining a license by means of fraud, misrepresentation, concealment, or through the mistake or inadvertence of the director;

(2) Violating any of the provisions of this chapter or any lawful rules or regulations made by the director pursuant thereto or violating a provision of chapter 64.36, 19.105, or 58.19 RCW or the rules adopted under those chapters;

(3) Being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar offense or offenses: PROVIDED, That for the purposes of this section being convicted shall include all instances in which a plea of guilty or nolo contendere is the basis for the conviction, and all proceedings in which the sentence has been deferred or suspended;

(4) Making, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication or distribution of false statements, descriptions or promises of such character as to reasonably induce any person to act thereon, if the statements, descriptions or promises purport to be made or to be performed by either the licensee or his or her principal and the licensee then knew or, by the exercise of reasonable care and inquiry, could have known, of the falsity of the statements, descriptions or promises;

(5) Knowingly committing, or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or device whereby any other person lawfully relies upon the word, representation or conduct of the licensee;

(6) Accepting the services of, or continuing in a representative capacity, any associate broker or salesperson who has not been granted a license, or after his or her license has been revoked or during a suspension thereof;

(7) Conversion of any money, contract, deed, note, mortgage, or abstract or other evidence of title, to his or her own use or to the use of his or her principal or of any other person, when delivered to him or her in trust or on condition, in violation of the trust or before the happening of the condition; and failure to return any money or contract, deed, note, mortgage, abstract or other evidence of title within thirty days after the owner thereof is entitled thereto, and makes demand therefor, shall be prima facie evidence of such conversion;

(8) Failing, upon demand, to disclose any information within his or her knowledge to, or to produce any document, book or record in his or her possession for inspection of the director or his or her authorized representatives acting by authority of law;

(9) Continuing to sell any real estate, or operating according to a plan of selling, whereby the interests of the public are endangered, after the director has, by order in writing, stated objections thereto;

(10) Committing any act of fraudulent or dishonest dealing or a crime involving moral turpitude, and a certified copy of the final holding of any court of competent jurisdiction in such matter shall be conclusive evidence in any hearing under this chapter;

(11) Advertising in any manner without affixing the broker's name as licensed, and in the case of a salesperson or associate broker, without affixing the name of the broker as licensed for whom or under whom the salesperson or associate broker operates, to the advertisement;

(12) Accepting other than cash or its equivalent as earnest money unless that fact is communicated to the owner prior to his or her acceptance of the offer to purchase, and such fact is shown in the earnest money receipt;

(13) Charging or accepting compensation from more than one party in any one transaction without first making full disclosure of all the facts to all the parties interested in the transaction;

(14) Accepting, taking or charging any undisclosed commission, rebate or direct profit on expenditures made for the principal;

(15) Accepting employment or compensation for appraisal of real property contingent upon reporting a predetermined value;

(16) Issuing an appraisal report on any real property in which the broker, associate broker, or salesperson has an interest unless his or her interest is clearly stated in the appraisal report;

(17) Misrepresentation of his or her membership in any state or national real estate association;

(18) Discrimination against any person in hiring or in sales activity, on the basis of race, color, creed or national origin, or violating any of the provisions of any state or federal antidiscrimination law;

(19) Failing to keep an escrow or trustee account of funds deposited with him or her relating to a real estate transaction, for a period of three years, showing to whom paid, and such other pertinent information as the

director may require, such records to be available to the director, or his or her representatives, on demand, or upon written notice given to the bank;

(20) Failing to preserve for three years following its consummation records relating to any real estate transaction;

(21) Failing to furnish a copy of any listing, sale, lease or other contract relevant to a real estate transaction to all signatories thereof at the time of execution;

(22) Acceptance by a branch manager, associate broker, or salesperson of a commission or any valuable consideration for the performance of any acts specified in this chapter, from any person, except the licensed real estate broker with whom he or she is licensed;

(23) To direct any transaction involving his or her principal, to any lending institution for financing or to any escrow company, in expectation of receiving a kickback or rebate therefrom, without first disclosing such expectation to his or her principal;

(24) Failing to disclose to an owner his or her intention or true position if he or she directly or indirectly through third party, purchases for himself or herself or acquires or intends to acquire any interest in, or any option to purchase, property;

(25) In the case of a broker licensee, failing to exercise adequate supervision over the activities of his or her licensed associate brokers and salespersons within the scope of this chapter;

(26) Any conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness or incompetency;

(27) Acting as a mobile home and travel trailer dealer or salesperson, as defined in RCW 46.70.011 as now or hereafter amended, without having a license to do so;

(28) Failing to assure that the title is transferred under chapter 46.12 RCW when engaging in a transaction involving a mobile home as a broker, associate broker, or salesperson; or

(29) Violation of an order to cease and desist which is issued by the director under this chapter.

Sec. 6. Section 45, chapter 52, Laws of 1957 as amended by section 10, chapter 332, Laws of 1987 and RCW 18.85.240 are each amended to read as follows:

The director may deputize one or more assistants to perform his or her duties with reference to (~~refusal, revocation, or suspension of licenses and imposition of fines~~) disciplinary action.

Sec. 7. Section 23, chapter 222, Laws of 1951 as last amended by section 11, chapter 332, Laws of 1987 and RCW 18.85.251 are each amended to read as follows:

The disciplinary proceedings (~~for revocation or suspension of a license or imposition of a fine or refusal to renew a license or accept an application~~)

~~for an initial license or license renewal))~~ shall be had on motion of the director or after a statement in writing verified by some person or persons familiar with the facts upon which the proposed ~~((revocation, suspension, refusal, or fine))~~ disciplinary action is based has been filed with the director. Upon receipt of such statement or accusation, the director shall make a preliminary investigation of the facts charged to determine whether the statement or accusation is sufficient. If the director shall determine the statement or accusation is sufficient to require formal action, the director shall thereupon set the matter for hearing at a specified time and place. A copy of such order setting time and place and a copy of the verified statement shall be served upon the licensee or applicant involved not less than twenty days before the day appointed in the order for said hearing. The department of licensing, the licensee or applicant accused, and the person making the accusation may be represented by counsel at such a hearing. The director or an administrative law judge appointed under chapter 34.12 RCW shall hear and receive pertinent evidence and testimony.

Sec. 8. Section 25, chapter 222, Laws of 1951 as last amended by section 13, chapter 332, Laws of 1987 and RCW 18.85.271 are each amended to read as follows:

If the director shall decide, after such hearing, that the evidence supports the accusation by a preponderance of evidence, the director may ~~((revoke or suspend the license, or fine the licensee, or deny the application for, or renewal of, a license))~~ impose sanctions authorized under RCW 18.85-.040. In such event the director shall enter an order to that effect and shall file the same in his or her office and immediately mail a copy thereof to the affected party at the address of record with the department. Such order shall not be operative for a period of ten days from the date thereof. Any licensee or applicant aggrieved by a final decision by the director in a contested case whether such decision is affirmative or negative in form, is entitled to a judicial review in the superior court under the provisions of the Administrative Procedure Act, chapter 34.04 RCW. Upon instituting appeal in the superior court, the appellant shall give a cash bond to the state of Washington, which bond shall be filed with the clerk of the court, in the sum of five hundred dollars to be approved by the judge of said court, conditioned to pay all costs that may be awarded against such appellant in the event of an adverse decision, such bond and notice to be filed within thirty days from the date of the director's decision.

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Approved by the Governor March 22, 1988.

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