

CHAPTER 261

[House Bill No. 448]

REAL ESTATE BROKERS AND SALESMEN—CEASE AND DESIST ORDERS

AN ACT Relating to real estate brokers and salesmen; amending section 19, chapter 252, Laws of 1941 as last amended by section 19, chapter 139, Laws of 1972 ex. sess. and RCW 18.85.230; and adding a new section to chapter 18.85 RCW.

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

Section 1. Section 19, chapter 252, Laws of 1941 as last amended by section 19, chapter 139, Laws of 1972 ex. sess. and RCW 18.85.230 are each amended to read as follows:

The director may, upon his 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 salesman, regardless of whether the transaction was for his own account or in his capacity as broker, and may temporarily suspend or permanently revoke or deny the license of any holder 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;

(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 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 salesman who has not been granted a license, or after his 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 own use or to the use of his principal or of any other person, when delivered to him 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 knowledge to, or to produce any document, book or record in his possession for inspection of the director or his 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 salesman or associate broker, without affixing the name of the broker as licensed for whom or under whom the salesman 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 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 or salesman has an interest unless his interest is clearly stated in the appraisal report;

(17) Misrepresentation of his 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 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 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 salesman, associate broker or branch manager of a commission or any valuable consideration for the performance of any acts specified in this 1972 amendatory act, from any person, except the licensed real estate broker with whom he is licensed;

(23) To direct any transaction involving his 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 principal;

(24) Failing to disclose to an owner his intention or true position if he directly or indirectly through third party, purchases for himself 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 licensed associate brokers and salesmen within the scope of this 1972 amendatory act;

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

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

NEW SECTION. Sec. 2. There is added to chapter 18.85 RCW a new section to read as follows:

(1) The director may issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated a provision of this chapter or a lawful order or rule of the director.

(2) If the director makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, he may issue a temporary cease and desist order. Before issuing the temporary cease and desist order, whenever possible the director shall give notice by telephone or otherwise of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include a provision that a hearing will be held upon request to determine whether or not the order will become permanent.

At the time the temporary cease and desist order is served, the licensee shall be notified that he is entitled to request a hearing for the sole purpose of determining whether or not the public interest imperatively requires that the temporary cease and desist order be continued or modified pending the outcome of the hearing to determine whether or not the order will become permanent. The hearing shall be held within thirty days after the department receives the request for hearing, unless the licensee requests a later hearing. A licensee may secure review of any decision rendered at a temporary cease and desist order review hearing in the same manner as a contested case.

Passed the House June 8, 1977.

Passed the Senate June 3, 1977.

Approved by the Governor June 15, 1977.

Filed in Office of Secretary of State June 15, 1977.

CHAPTER 262

[House Bill No. 1264]

PUBLIC BODY REFUNDING BONDS

AN ACT Relating to the refunding of bonds; amending section 3, chapter 138, Laws of 1965 ex. sess. as amended by section 2, chapter 111, Laws of 1974 ex. sess. and RCW 39.53.020; amending section 5, chapter 138, Laws of 1965 ex. sess. as amended by section 3, chapter 25, Laws of 1973 1st ex.