

CHAPTER 204

[House Bill No. 447]

REAL ESTATE BROKERS AND SALESMEN—MOBILE HOME OR TRAVEL TRAILER SALES

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; amending section 3, chapter 74, Laws of 1967 ex. sess. as last amended by section 2, chapter 132, Laws of 1973 1st ex. sess. and RCW 46.70.011; and repealing section 1, chapter 60, Laws of 1973 1st ex. sess. and RCW 18.85.410.

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;

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

or

(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 or salesman.

Sec. 2. Section 3, chapter 74, Laws of 1967 ex. sess. as last amended by section 2, chapter 132, Laws of 1973 1st ex. sess. and RCW 46.70.011 are each amended to read as follows:

As used in this chapter:

(1) "Vehicle" means and includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(2) "Motor vehicle" shall mean every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, and which is required to be registered and titled under Title 46 RCW, Motor Vehicles.

(3) "Vehicle dealer" means any person, firm, association, corporation or trust, not excluded by subsection (4) of this section, engaged in the business of buying, selling, exchanging, offering, brokering, leasing with an option to purchase, auctioning, soliciting, or advertising the sale of new, or used vehicles: PROVIDED, That vehicle dealers shall be classified as follows:

(a) A "motor vehicle dealer" shall be a vehicle dealer that deals in new and used motor vehicles;

(b) A "mobile home and travel trailer dealer" shall be a vehicle dealer that deals in mobile homes or travel trailers, or both;

(c) A "miscellaneous vehicle dealer" shall be a vehicle dealer that deals in motorcycles and/or vehicles other than motor vehicles or mobile homes and travel trailers.

(4) The term "vehicle dealer" does not include:

(a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by, or acting under a judgment or order of any court; or

(b) Public officers while performing their official duties; or

(c) Employees of vehicle dealers who are engaged in the specific performance of their duties as such employees; or

(d) Any person engaged in an isolated sale of a vehicle in which he is the registered or legal owner, or both, thereof((-)); or

(e) Any person, firm, association, corporation or trust, engaged in the selling of equipment other than vehicles, used for agricultural or industrial purposes; or

(f) A real estate broker licensed under chapter 18.85 RCW, or his authorized representative, who, on behalf of the legal or registered owner of a mobile home, assists with the sale of the mobile home in conjunction with the sale of the real estate upon which the mobile home is located.

(5) "Vehicle salesman" means any person who for any form of compensation sells, auctions, leases with an option to purchase, or offers to sell or to so lease vehicles on behalf of a vehicle dealer.

(6) The term "department" means the department of motor vehicles which shall administer and enforce the provisions of this chapter.

(7) "Director" means the director of the department of motor vehicles.

(8) "Manufacturer" means any person, firm, association, corporation or trust, resident or nonresident, who manufactures or assembles new and unused vehicles and shall further include the terms:

(a) "Distributor" which means any person, firm, association, corporation or trust, resident or nonresident, who in whole or in part offers for sale, sells or distributes any new and unused vehicle to vehicle dealers or who maintains factory representatives.

(b) "Factory branch" which means a branch office maintained by a manufacturer for the purpose of selling or offering for sale, vehicles to a distributor, wholesaler or vehicle dealer, or for directing or supervising in whole or in part factory or distributor representatives, and shall further include any sales promotion organization, whether the same be a person, firm or corporation, which is engaged in promoting the sale of new and unused vehicles in this state of a particular brand or make to vehicle dealers.

(c) "Factory representative" which means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or promoting for the sale of his, its, or their vehicles or for supervising or contracting with his, its, or their dealers or prospective dealers.

(9) "Established place of business" means a permanent, enclosed commercial building located within the state of Washington easily accessible and open to the public, at all reasonable times, with an improved display area of not less than three thousand square feet in or immediately adjoining said building, and at which the business of a vehicle dealer, including the display and repair of vehicles, may be lawfully carried on in accordance with the terms of all applicable building code, zoning and other land-use regulatory ordinances and in which such building the public may contact the vehicle dealer or his vehicle salesman, at all reasonable times and at which place of business shall be kept and maintained the books, records and files necessary to conduct the business at such place. The established place of business shall display an exterior sign permanently affixed to the land or building, with letters clearly visible to the major avenue of traffic.

(10) "Subagency" means any place of business of a vehicle dealer within the same county as the principal place of business of the firm which is physically and geographically separated from the principal place of business of the firm or any place of business of a vehicle dealer within the same county as the principal place of business of the firm under which he does business under a name other than the principal name of the firm, or both.

NEW SECTION. Sec. 3. Section 1, chapter 60, Laws of 1973 1st ex. sess. and RCW 18.85.410 are each repealed.

Passed the House May 3, 1977.

Passed the Senate June 3, 1977.

Approved by the Governor June 10, 1977.

Filed in Office of Secretary of State June 10, 1977.

CHAPTER 205

[House Bill No. 474]

LIEN FOR LABOR, MATERIALS, TAXES ON PUBLIC WORKS—RELEASE OF
RETAINED FUNDS

AN ACT Relating to public works; and amending section 1, chapter 166, Laws of 1921 as last amended by section 1, chapter 104, Laws of 1975 1st ex. sess. and RCW 60.28.010.

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

Section 1. Section 1, chapter 166, Laws of 1921 as last amended by section 1, chapter 104, Laws of 1975 1st ex. sess. and RCW 60.28.010 are each amended to read as follows:

(1) Contracts for public improvements or work, other than for professional services, by the state, or any county, city, town, district, board, or other public body, herein referred to as "public body", shall provide, and there shall be reserved by the public body from the moneys earned by the contractor on estimates during the progress of the improvement or work, a sum equal to ten percent of the first one hundred thousand dollars and five percent for all amounts over one hundred thousand dollars of such estimates, said sum to be retained by the state, county, city, town, district, board, or other public body, as a trust fund for the protection and payment of any person or persons, mechanic, subcontractor or materialman who shall perform any labor upon such contract or the doing of said work, and all persons who shall supply such person or persons or subcontractors with provisions and supplies for the carrying on of such work, and the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from such contractor. Every person performing labor or furnishing supplies toward the completion of said improvement or work shall have a lien upon said moneys so reserved: **PROVIDED**, That such notice of the lien of such claimant shall be given in the manner and within the time provided in RCW 39.08.030 through 39.08.060 as now existing and in accordance with any amendments that may hereafter be made thereto: **PROVIDED FURTHER**, That the board, council, commission, trustees, officer or body acting for the state, county or municipality or other public body; (a) at any time after fifty percent of the original contract work has been completed, if it finds that satisfactory progress is being made, may make any of the partial payments which