

1 SENATE BILL NO. 340

2 INTRODUCED BY D. BERRY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING GUIDELINES FOR PERSONAL TRANSACTIONS BY
 5 REAL ESTATE SALESPERSONS; DEFINING "PERSONAL TRANSACTION"; REVISING REAL ESTATE LAW
 6 ON PLACING FUNDS IN A REGISTERED BROKER'S TRUST ACCOUNT BY PROVIDING THAT A
 7 SALESPERSON IS NOT REQUIRED TO PLACE MONEY RECEIVED BY A PERSON WITH THE
 8 SALESPERSON'S REGISTERED SUPERVISING BROKER IF THE MONEY RECEIVED BY THE SALESPERSON
 9 IS PART OF THE SALESPERSON'S PERSONAL TRANSACTION; AMENDING ~~SECTION~~ SECTIONS
 10 37-51-309 AND 37-51-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 SECTION 1. SECTION 37-51-309, MCA, IS AMENDED TO READ:

15 **"37-51-309. Broker owner -- broker associate -- salesperson -- personal transactions of**
 16 **salesperson -- notice to department of change of association.** (1) A salesperson may not be associated
 17 with or under contract to more than one licensed broker owner, ~~nor may he~~ or perform services for a
 18 broker other than the one designated on the license issued to the salesperson.

19 (2) When a licensed salesperson desires to change ~~his~~ association or contractual relationship from
 20 one licensed broker to another, ~~he~~ the salesperson shall notify the department promptly in writing of these
 21 facts, pay the required fee, and return ~~his~~ the salesperson's license and pocket card, and a new license
 22 and pocket card ~~shall~~ must be issued. ~~No~~ A salesperson ~~shall~~ may not directly or indirectly work for or with
 23 a broker owner until ~~he~~ the salesperson has been issued a license to work for or with that broker owner.
 24 On termination of a salesperson's association or contractual relationship, ~~he~~ the salesperson shall surrender
 25 ~~his~~ the salesperson's license and pocket card to ~~his~~ the broker owner who shall return them to the
 26 department for cancellation.

27 (3) Only one license ~~shall~~ may be issued to a salesperson to be in effect at one time.

28 (4) A broker associate may not be associated with more than one broker owner.

29 (5) (a) The provisions of this chapter do not prohibit a salesperson from engaging in personal
 30 transactions, and the provisions of this chapter do not require a broker to exercise any supervision or

1 provide any training for a salesperson with respect to personal transactions of the salesperson.

2 (b) A broker is not responsible or liable for the personal transactions of a salesperson.

3 (c) Prior to entering into a personal transaction, a salesperson shall disclose in writing to the other
4 party that the transaction is a personal transaction with respect to the salesperson and that the transaction
5 does not involve the salesperson's broker or real estate firm.

6 (6) For the purposes of this part, "personal transaction" includes the following:

7 (a) the sale, purchase, or exchange of real property owned or acquired by the salesperson; and

8 (b) the leasing or renting of real property owned by the salesperson."

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10 **Section 2.** Section 37-51-321, MCA, is amended to read:

11 **"37-51-321. Revocation or suspension of license -- initiation of proceedings -- grounds.** (1) The
12 board may on its own motion and shall on the sworn complaint in writing of a person investigate the
13 actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may
14 revoke or suspend a license issued under this chapter when the broker or salesperson has been found
15 guilty by a majority of the board of any of the following practices:

16 (a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio,
17 display, or other nature, which advertising in any material particular or in any material way misrepresents
18 any property, terms, values, policies, or services of the business conducted. A broker who operates under
19 a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise
20 name, the broker does not incorporate the broker's own name or the trade name, if any, by which the
21 office is known in the franchise name or logotype. The board may not adopt advertising standards more
22 stringent than those set forth in this subsection.

23 (b) making any false promises of a character likely to influence, persuade, or induce;

24 (c) pursuing a continued and flagrant course of misrepresentation or making false promises through
25 agents or salespersons or any medium of advertising or otherwise;

26 (d) use of the term "realtor" by a person not authorized to do so or using another trade name or
27 insignia of membership in a real estate organization of which the licensee is not a member;

28 (e) failing to account for or to remit money coming into the broker's or salesperson's possession
29 belonging to others;

30 (f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures

1 made for a principal;

2 (g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing
3 to disclose in advertisements for real property the person's dual capacity as broker and principal;

4 (h) guaranteeing, authorizing, or permitting a person to guarantee future profits that may result
5 from the resale of real property;

6 (i) offering real property for sale or lease without the knowledge and consent of the owner or the
7 owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized
8 agent;

9 (j) inducing a party to a contract of sale or lease to break the contract for the purpose of
10 substituting a new contract with another principal;

11 (k) accepting employment or compensation for appraising real property contingent on the reporting
12 of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson
13 has an undisclosed interest;

14 (l) negotiating a sale, exchange, or lease of real property directly with a seller or buyer if the broker
15 or salesperson knows that the seller or buyer has a written, outstanding listing agreement or buyer broker
16 agreement in connection with the property granting an exclusive agency to another broker;

17 (m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of
18 influencing a purchaser or prospective purchaser of real property;

19 (n) representing or attempting to represent a real estate broker other than the employer without
20 the express knowledge or consent of the employer;

21 (o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time
22 of its execution;

23 (p) paying a commission in connection with a real estate sale or transaction to a person who is
24 not licensed as a real estate broker or real estate salesperson under this chapter;

25 (q) intentionally violating a rule adopted by the board in the interests of the public and in
26 conformity with this chapter;

27 (r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody
28 of the salesperson's ~~registered~~ SUPERVISING broker, deposit money or other money entrusted to the
29 salesperson in that capacity by a person, except if the money received by the salesperson is part of the
30 salesperson's personal transaction;

1 (s) demonstrating unworthiness or incompetency to act as a broker or salesperson; or

2 (t) conviction of a felony.

3 (2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others,
4 whether by means of printed material, radio, television, or display or by other means, unless the broker
5 or salesperson has a signed listing agreement from the owner of the property. The listing agreement must
6 be valid as of the date of advertisement.

7 (b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including
8 information on properties listed by other brokers or salespersons who will cooperate with the selling broker
9 or salesperson in materials dispensed to prospective customers.

10 (c) The license of a broker or salesperson who violates this subsection (2) may be suspended or
11 revoked as provided in subsection (1)."

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13 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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