

SENATE BILL NO. 256

INTRODUCED BY K. GILLAN, O'HARA

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO REAL ESTATE BROKERS AND SALESPERSONS TO CLARIFY THE RIGHTS AND OBLIGATIONS OF A SUPERVISING BROKER; AND AMENDING SECTIONS 37-51-302, 37-51-305, 37-51-308, 37-51-309, AND 37-51-602, MCA."

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

Section 1. Section 37-51-302, MCA, is amended to read:

"37-51-302. Broker's or salesperson's license -- qualifications of applicant -- supervising broker endorsement. (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesperson in a manner that safeguards the interests of the public.

(2) An applicant for a broker's license:

(a) must be at least 18 years of age;

(b) must have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) must have been actively engaged as a licensed real estate salesperson for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesperson because of conditions existing in the area where the applicant resides, the board may waive this experience requirement;

(d) shall file an application for a license with the department; and

(e) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours, in addition to those required to secure a salesperson's license, in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine honesty,



1 trustworthiness, and competency.

2 (4) (a) An applicant for a salesperson's license:

3 (i) must be at least 18 years of age;

4 (ii) must have received credit for completion of 2 years of full curriculum study at an accredited high
5 school or completed an equivalent education as determined by the board;

6 (iii) shall file an application for a license with the department; and

7 (iv) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours in
8 a course of study approved by the board and taught by instructors approved by the board and has satisfactorily
9 passed an examination dealing with the material taught in each course. The course of study must include the
10 subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

11 (b) The application must be accompanied by the recommendation of ~~the~~ a licensed broker with a
12 supervising broker endorsement by whom the applicant will be employed or placed under contract, certifying that
13 the applicant is of good repute and that the broker will actively supervise and train the applicant during the period
14 the requested license remains in effect.

15 (5) The department shall issue to each licensed broker and to each licensed salesperson a license and
16 a pocket card in a form and size that the board prescribes.

17 (6) (a) An applicant for a supervising broker endorsement must meet the education and experience
18 requirements established by the board by rule except that:

19 ~~—— (i) any broker licensed prior to October 1, 2007, is entitled to a supervising broker endorsement provided~~
20 ~~that the broker indicates on the broker's license renewal form for the 2008 calendar year the broker's intention~~
21 ~~to obtain the endorsement;~~

22 ~~—— (ii) a broker who obtains a supervising broker endorsement pursuant to subsection (6)(a)(i) is subject to~~
23 ~~the endorsement renewal requirements adopted by the board by rule in order to supervise one or more licensed~~
24 ~~salespersons;~~

25 ~~—— (iii) continuing education requirements for a supervising broker endorsement may not be in addition to~~
26 ~~the continuing education requirements for a licensed broker with respect to the total number of hours or credits~~
27 ~~required.~~

28 (b) The board may not assess a licensing fee for obtaining or renewing a supervising broker
29 endorsement.

30 (c) The board may adopt rules allowing a salesperson to temporarily associate with a broker with a

1 supervising broker endorsement other than the supervising broker listed on the salesperson's pocket card."

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3 **Section 2.** Section 37-51-305, MCA, is amended to read:

4 **"37-51-305. License -- delivery -- display -- pocket card.** (1) A license must bear the seal of the board.

5 (2) The license of a real estate salesperson must be delivered or mailed to the ~~real estate salesperson's~~
6 supervising broker with whom the real estate salesperson is associated and must be kept in the custody and
7 control of the supervising broker.

8 (3) A broker shall display the broker's own license conspicuously in the broker's place of business.

9 (4) The department shall annually prepare and deliver a pocket card certifying that the person whose
10 name appears is a registered real estate broker or a registered real estate salesperson, stating the period for
11 which fees have been paid and, on a real estate salesperson's cards only, the name and address of the
12 salesperson's supervising broker with whom the real estate salesperson is associated."

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14 **Section 3.** Section 37-51-308, MCA, is amended to read:

15 **"37-51-308. Broker's office -- notice to department of change of address.** (1) A resident licensed
16 broker shall maintain a fixed office in this state. The original license of the broker and, if the broker is a
17 supervising broker, the original license of each salesperson associated or under contract with the broker ~~shall~~
18 must be prominently displayed in the office. The address of the office and any branch office ~~shall~~ must be
19 designated on the broker's license.

20 (2) In case of removal from the designated address, the licensee shall notify the department before
21 removal or within 10 days ~~thereafter of removal,~~ designating the new location of this office and paying the required
22 fee, ~~whereupon.~~ After receipt of the information required under this subsection, the department shall issue a
23 license for the new location must be issued for the unexpired period."

24

25 **Section 4.** Section 37-51-309, MCA, is amended to read:

26 **"37-51-309. Broker -- salesperson -- personal transactions of salesperson -- notice to department**
27 **of change of association.** (1) A salesperson may not be associated with or under contract to more than one
28 ~~licensed~~ supervising broker or perform services for a broker with a supervising broker endorsement other than
29 the one designated on the license issued to the salesperson except on a temporary basis as provided in
30 37-51-302.

1 (2) When a licensed salesperson desires to change association or contractual relationship from one
 2 ~~licensed~~ supervising broker to another, the salesperson shall notify the department promptly in writing of these
 3 facts, pay the required fee, and return the salesperson's license, and a new license and pocket card must be
 4 issued. A salesperson may not directly or indirectly work for or with a supervising broker until the salesperson
 5 has been issued a license to work for or with that supervising broker. On termination of a salesperson's
 6 association or contractual relationship, the salesperson shall surrender the salesperson's license to the
 7 salesperson's supervising broker, who shall return it to the department for cancellation.

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

9 (4) (a) The provisions of this chapter do not prohibit a salesperson from engaging in personal
 10 transactions, and the provisions of this chapter do not require a supervising broker to exercise any supervision
 11 or provide any training for a salesperson with respect to personal transactions of the salesperson.

12 (b) A supervising broker is not responsible or liable for the personal transactions of a salesperson: if:
 13 (i) the personal transaction does not involve the salesperson's supervising broker or real estate firm; and
 14 ~~(e)(ii) Prior~~ prior to entering into a personal transaction, ~~a~~ the salesperson ~~shall disclose~~ discloses in
 15 writing to the other party that the transaction is a personal transaction with respect to the salesperson and that
 16 the transaction does not involve the salesperson's supervising broker or real estate firm.

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

- 18 (a) the sale, purchase, or exchange of real property owned or acquired by the salesperson; and
 19 (b) the leasing or renting of real property owned by the salesperson."
 20

21 **Section 5.** Section 37-51-602, MCA, is amended to read:

22 **"37-51-602. Definition of property management -- exemptions from application.** (1) An act
 23 performed for compensation of any kind in the leasing, renting, subleasing, or other transfer of possession of real
 24 estate owned by another without transfer of the title to the real estate, except as specified in this section,
 25 constitutes the practice of property management. The provisions of this chapter do not apply to:

- 26 (a) a relative of the owner of the real estate, defined as follows:
 27 (i) a son or daughter of the property owner or a descendant of either;
 28 (ii) a stepson or stepdaughter of the property owner;
 29 (iii) a brother, sister, stepbrother, or stepsister of the property owner;
 30 (iv) the father or mother of the property owner or the ancestor of either;

- 1 (v) a stepfather or stepmother of the property owner;
- 2 (vi) a son or daughter of a brother or sister of the property owner;
- 3 (vii) a brother or sister of the father or mother of the property owner;
- 4 (viii) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the
- 5 property owner; or
- 6 (ix) the spouse of the property owner;
- 7 (b) a person who leases no more than four residential real estate units;
- 8 (c) a person acting as attorney-in-fact under a power of attorney from the owner of real estate who
- 9 authorizes the final consummation of any contract for the renting or leasing of the real estate. This exemption is
- 10 meant to exclude a single or irregular transaction and may not be routinely used to escape the necessity of
- 11 obtaining a license.
- 12 (d) an attorney at law in the performance of duties as an attorney;
- 13 (e) a receiver, trustee in bankruptcy, personal representative, person acting in regard to real estate
- 14 pursuant to a court order, or a trustee under a trust agreement, deed of trust, or will;
- 15 (f) an officer of the state or any of its political subdivisions in the conduct of official duties;
- 16 (g) a person acting as a manager of a housing complex for low-income individuals subsidized either
- 17 directly or indirectly by the state, any agency or political subdivision of the state, or the government or an agency
- 18 of the United States;
- 19 (h) a person who receives compensation from the owner of the real estate in the form of reduced rent
- 20 or salary, unless that person holds signatory authority on the account in which revenue from the real estate is
- 21 deposited or disbursed;
- 22 (i) a person employed by the owner of the real estate if that person's property management duties are
- 23 incidental to the person's other employment-related duties; or
- 24 (j) a person employed on a salaried basis by only one person.
- 25 (2) A licensed real estate broker on active status or a licensed real estate salesperson on active status
- 26 and acting under the supervision of a real estate a supervising broker may act as a property manager without
- 27 meeting any qualifications in addition to those required for licensure as a real estate broker or real estate
- 28 salesperson and without holding a separate property manager's license."

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30 NEW SECTION. **Section 6. Saving clause.** [This act] does not affect rights and duties that matured,

1 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

2 - END -