

2014 -- H 7474 SUBSTITUTE A

=====
LC004466/SUB A
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

—————
A N A C T

RELATING TO BUSINESSES AND PROFESSIONS - REAL ESTATE BROKERS AND
SALESPERSONS

Introduced By: Representatives Messier, Nunes, and Ferri

Date Introduced: February 13, 2014

Referred To: House Corporations

(Business Regulation)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 5-20.5-12 and 5-20.5-15 of the General Laws in Chapter 5-20.5
2 entitled "Real Estate Brokers and Salespersons" are hereby amended to read as follows:
3 **5-20.5-12. Commission -- Creation -- Composition -- Appointment, terms, and**
4 **compensation of members -- Officers -- Deputy directors -- Seal. --** (a) (1) Within the
5 department of business regulation there is created the Rhode Island real estate commission,
6 subsequently referred to as "commission", to consist of nine (9) persons at least one from each
7 county to be appointed by the governor, each of whom has been a citizen of this state for at least
8 ten (10) years prior to the date of appointment, three (3) current licensed brokers each of whom
9 have been engaged as a licensed broker in this state for at least ~~ten (10)~~ five (5) years prior to the
10 date of appointment, four (4) of whom are members of the general public, at least one of whom
11 has substantial academic experience in real estate and at least one who has been active in citizen
12 groups concerned with real estate practices and activities. Two (2) members appointed for one
13 year; two (2) members shall be appointed for two (2) years; one member for three (3) years; one
14 member for four (4) years; and one member for five (5) years; beginning on December 31, 1973.
15 Successors of all members shall be appointed by the governor for terms of five (5) years each and
16 until their successors are appointed and qualify by subscribing to the constitutional oath of office,
17 which shall be filed with the secretary of state. Members to fill vacancies shall be appointed for
18 the unexpired term. No member shall be appointed to succeed himself or herself for more than

1 one full term. There are two (2) ex-officio members of the commission and they are the attorney
2 general or his or her designee and the director of the department or his or her designee. All ex-
3 officio members have full voting powers and serve without compensation. Upon qualification of
4 the members appointed, the commission shall organize by selecting from its members a
5 chairperson.

6 (2) The commission shall adopt reasonable rules and regulations to carry out its
7 purposes. The department of business regulation with the assistance of the commission shall
8 establish any reasonable rules and regulations that are appropriate for that program to insure that
9 education and practice requirements of license holders meet the public interest.

10 (b) The director shall employ a deputy director and any other employees that he or she
11 deems necessary and proper to discharge the duties imposed by this chapter, and shall determine
12 and prescribe their duties and fix their compensation, subject to the general laws of the state.

13 (c) No member of the commission shall receive compensation for his or her official
14 duties but shall be reimbursed for his or her actual and necessary expenses incurred in the
15 performance of his or her official duties.

16 (d) The commission shall adopt a seal of any design that it prescribes. Copies of all
17 records and papers in the office of the commission, duly certified and authenticated by its seal,
18 shall be received in evidence in all courts with like effect as the original. All records of the
19 commission are open to public inspection under any reasonable rules and regulations that it
20 prescribes.

21 (e) The commission shall have a policy-making role in the preparation and composition
22 of the examinations to be administered by the ~~division of professional regulation~~ [real estate](#)
23 [division within the department of business regulation](#). Subsequent to the administration of the
24 examination, the commission shall review the examinations to evaluate their effectiveness. The
25 commission shall supervise the operations of the [real estate division within the department of](#)
26 [business regulation](#) ~~division~~ in an advisory capacity in promulgating any policy that is necessary
27 to improve the operations of the ~~division~~ [real estate division within the department of business](#)
28 [regulation](#) in their areas of expertise. The promulgation of that policy is subject to the approval of
29 the director ~~of the department of business regulation~~.

30 **5-20.5-15. Hearings before revocation or suspension of license.** -- (a) (1) Before
31 refusing to issue a license or suspending or revoking a license on its own motion, the division of
32 professional regulation shall notify the applicant or licensee of its intended action and the grounds
33 for the action. The applicant or licensee may, within twenty (20) days file with the division, ~~in~~
34 ~~triplicate~~, a request for a hearing stating his or her answer to the grounds specified in the

1 notification. The division shall consider the answer and set a date for a hearing, notifying the
2 applicant or licensee of the date at least twenty (20) days prior to the hearing date.

3 (2) Before refusing to issue a license or suspending or revoking an existing license upon
4 the verified written complaint of any person stating a cause of action under section 5-20.5-17, the
5 department of business regulation shall, in writing, notify the accused applicant or licensee of its
6 receipt of the complaint, enclosing a copy of the complaint. The accused applicant or licensee
7 shall within twenty (20) days, file [his or her answer to the complaint or complaints](#) with the
8 department, ~~in quadruplicate, his or her answer to the complainant or complainants.~~

9 (3) The division shall transmit a copy of the answer to the complainant or complainants
10 and set a time and place for a hearing, which is at least twenty (20) days prior to the hearing date.

11 (4) All notices and answers required or authorized to be made or filed under this section
12 may be served or filed personally, or by certified mail to the last known business address of the
13 addressee. If served personally, the time runs from the date of service; if by registered mail, from
14 the postmarked date of the letter enclosing the document.

15 (5) Hearings are open to the public, and are conducted in accordance with the provisions
16 of title 42, chapter 35 relating to Administrative Procedures, and the department's rules of
17 procedure for administrative hearings, and the applicant or licensee has an opportunity to be
18 heard in person or by counsel. A hearing officer appointed by the director shall render a decision
19 on any application or complaint within sixty (60) days after the final hearing in the matter and
20 shall immediately notify the parties to the proceedings, in writing, its ruling, order or decision. In
21 the event the matter contained in the complaint has been filed or made a part of a case pending in
22 any court in this state, the division may then withhold its decision until the court action has been
23 concluded. Hearings shall be held in accordance with rules promulgated by the division in
24 conformity with law.

25 (b) Any unlawful act or violation of any of the provisions of this chapter by any
26 salesperson is not cause for the suspension or revocation of the license of the broker with whom
27 he or she is affiliated unless it appears to the satisfaction of the division of professional regulation
28 that the broker had knowledge of the unlawful act or violation.

29 (c) The division of professional regulation is authorized and empowered to issue
30 subpoenas for the attendance of witnesses and the production of records or documents. The
31 process issued by the division may extend to all parts of the state, and process may be served by
32 any person designated by the division. The person serving that process shall receive any
33 compensation that is allowed by the division, not to exceed the fee prescribed by law for similar
34 services. All witnesses subpoenaed who appear in any proceedings before the division shall

1 receive the same fees and mileage allowances allowed by law, and all those fees and allowances
2 are taxed as part of the cost of the proceedings.

3 (d) Where, in any proceeding before the division of professional regulation, any witness
4 fails or refuses to attend upon subpoena issued by the division, or refuses to testify, or refuses to
5 produce any records or documents the production of which is called for by the subpoena, the
6 attendance of the witness and the giving of his or her testimony and the production of the
7 documents and records shall be enforced by any court of competent jurisdiction of this state in the
8 same manner as are enforced the attendance, testimony of witnesses, and production of records in
9 civil cases in the courts of this state.

10 SECTION 2. Sections 5-20.7-5, 5-20.7-6, 5-20.7-22, 5-20.7-24 and 5-20.7-25 of the
11 General Laws in Chapter 5-20.7 entitled "Real Estate Appraiser Certification Act" are hereby
12 amended to read as follows:

13 **5-20.7-5. Powers of the board.** -- The board shall:

14 (1) Establish criteria, standards, and requirements for the certifying and licensing of real
15 estate appraisers, including, but not limited to, educational criteria, experience criteria, and
16 examination requirements for certifying, licensing, and recertifying.

17 (2) Establish administrative procedures for disciplinary proceedings conducted pursuant
18 to the provisions of this chapter and the board shall censure, suspend, and revoke certificates
19 pursuant to the disciplinary proceedings established by the board.

20 (3) Have a policy-making role in the preparation and composition of the examinations to
21 be administered by the department or its designee. Subsequent to the administration of the
22 examination, the board shall review the examinations to evaluate their effectiveness.

23 (4) Supervise the operations in the department in an advisory capacity and promulgate
24 any policy, procedures, and rules that are necessary to improve the operations of the department
25 in their areas of expertise and to implement this chapter. The promulgation of those policies is
26 subject to the approval of the director of the department.

27 (5) Provide any advisory opinions to the department that are necessary for the
28 implementation of this chapter, [title XI of the Federal Financial Institutions Reform, Recovery
29 and Enforcement Act of 1989, 12 U.S.C. 3331 et seq., as may be amended from time to time and
30 with the federal regulatory standards promulgated thereunder](#), as well as any other standards of
31 expertise and certification deemed appropriate by the board.

32 ~~(6) Establish administrative procedures for disciplinary proceedings conducted pursuant~~
33 ~~to the provisions of this chapter and censure, suspend, and revoke certificates pursuant to the~~
34 ~~disciplinary proceedings provided.~~

1 **5-20.7-6. Powers of the department.** -- (a) The department shall have the following
2 powers and duties:

3 (1) Establish within the department an independent section named the real estate
4 appraisers section, which shall operate independent of the real estate section;

5 (2) Establish the examination specifications for certification and licensing of each
6 category of state certified and licensed real estate appraiser consistent with the advice of the
7 board and establish procedures for grading examinations;

8 (3) Administer the standards for education and experience as established by the board as
9 a prerequisite to examination and recertification as specified in this chapter;

10 (4) Administer the approval or disapproval of applications for certification and licensing
11 and to issue certificates;

12 (5) Administer the approval or disapproval of applications for the renewal of certificates;

13 (6) Establish any rules and regulations that are necessary for the implementation of this
14 chapter, [title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of](#)
15 [1989, 12 U.S.C. 3331 et seq., as may be amended from time to time, and with the federal](#)
16 [regulatory standards promulgated thereunder](#);

17 (7) Receive applications for state certification and licensing and establish administrative
18 procedures for the processing of those applications;

19 (8) Maintain a registry of names and addresses of individuals certified and licensed
20 under this chapter and retain all records and all application materials submitted to the department
21 pursuant to the certification and licensing process established by the department; and

22 (9) Assist the board, from time to time, in any other manner that the board requests.

23 (b) The department, pursuant to the provisions of this chapter, shall employ any
24 administrative personnel and employees that are necessary and proper to discharge the duties
25 imposed by this chapter and to determine and prescribe their duties and fix their compensation
26 subject to the general laws of this state.

27 **5-20.7-22. Hearing before revocation or suspension; refusal of certification or**

28 **licensing.** -- (a) Before refusing to issue a certificate or license or suspending or revoking a
29 certificate or license on its own motion, the director shall notify the applicant of his or her
30 intended action and the grounds for the action. The applicant may, within twenty (20) days, file
31 with the director, ~~in triplicate~~, a request for a hearing setting out his or her answer to the grounds
32 specified in the notification. The director shall consider the answer and set a date for the hearing,
33 notifying the applicant of that date at least twenty (20) days prior to the hearing date.

34 (b) Before refusing to issue a certification or suspending or revoking an existing

1 certificate or license upon the verified written complaint of any person setting out a cause of
2 action under section 5-20.7-20, the director shall, in writing, notify the accused applicant or
3 certificate holder of its receipt of the complaint, enclosing a copy of the complaint. The accused
4 applicant, certificate, or license holder shall, within twenty (20) days, file [his or her answer to the](#)
5 [complaint or complaints](#) with the department, ~~in triplicate, his or her answer to the complaint or~~
6 ~~complaints.~~

7 (c) The board shall transmit a copy of the answer to the complainant or complainants and
8 set a time and place for a hearing, which shall be at least twenty (20) days prior to the hearing
9 date.

10 (d) All notices and answers required or authorized to be made or filed under this section
11 may be served or filed personally, or by certified mail to the last know business address of the
12 addressee. If served personally, the time runs from the date of service; if by registered mail, from
13 the postmarked date of the letter enclosing the document.

14 (e) The director shall render a decision on any application or complaint within sixty (60)
15 days after the final hearing in the matter and shall immediately notify the parties to the
16 proceedings, in writing, of its rulings, orders, or decisions. If the matter contained in the
17 complaint has been filed or made a part of a case pending in any court in this state, the director
18 may then withhold its decision until the court action has been concluded. Hearings shall be held
19 in accordance with rules promulgated by the department in conformity with law. Any party
20 aggrieved by a final administrative decision of the director may appeal the decision in accordance
21 with the provisions of the Administrative Procedures Act, chapter 35 of title 42.

22 **5-20.7-24. Mortgage loan appraisers -- Relationship with lending institution. --** (a)

23 Every bank, trust company, loan investment company, mortgage company, and credit union or
24 any other lending institution, which accepts an application for any residential mortgage loan or
25 any commercial mortgage loan which requires an appraisal in order to process the loan is not
26 permitted to use an appraisal company that is either owned by or has directors, stockholders, or
27 employees of that bank, trust company, loan investment company, mortgage company, and credit
28 union or any other lending institution.

29 (b) All appraisal companies doing business in the state are required to disclose with the
30 Rhode Island department of business regulation those lending institutions that may have an
31 ownership interest in the appraisal company. If an ownership relationship exists between the
32 lending institution and an appraisal company, then the appraisal company is prohibited from
33 conducting any appraisals for that lending institution.

34 (c) Any appraisal companies doing business within the state ~~are prohibited from doing~~

1 ~~business within the state if a violation of this chapter is discovered~~ shall comply with the
2 provisions of this chapter, title XI of the Federal Financial Institutions Reform, Recovery and
3 Environment Act of 1989, 12 U.S.C. 3331 et seq., as may be amended from time to time, and
4 with the federal and state regulatory standards promulgated thereunder.

5 (d) Any lending institution which maintains Federal Deposit Insurance Corporation
6 (FDIC) or National Credit Union Association (NCUA) insurance protection for its deposits at a
7 lending institution is exempt from this provision.

8 (e) A violation of this section shall also be ~~held~~ considered to be a violation of chapter
9 13.1 of title 6.

10 **5-20.7-25. Effect of federal law. --** Notwithstanding any provision in this chapter to the
11 contrary, any applicable provisions of title XI of the "Federal Financial Institutions Reform,
12 Recovery & Enforcement Act of 1989 (FIRREA)," 12 U.S.C. section 3331 et seq., as may be
13 amended from time to time, and any federal regulatory standards promulgated thereunder shall
14 supersede any inconsistent provisions of this chapter ~~when applicable~~.

15 SECTION 3. This act shall take effect upon passage.

=====
LC004466/SUB A
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS - REAL ESTATE BROKERS AND
SALESPERSONS

1 This act would provide for the implementation of Title XI of the "Federal Financial
2 Institutions Reform, Recovery and Enforcement Act of 1989" and would further provide that the
3 real estate division with the department of business regulation administer examinations pursuant
4 to this chapter.

5 This act would take effect upon passage.

=====
LC004466/SUB A
=====