

2017 -- S 0168 SUBSTITUTE A

LC000864/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS - REAL ESTATE BROKERS AND SALESPERSONS

Introduced By: Senators Lombardi, McCaffrey, Lynch Prata, Archambault, and Jabour

Date Introduced: February 01, 2017

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 5-20.5-14 and 5-20.5-26 of the General Laws in Chapter 5-20.5
2 entitled "Real Estate Brokers and Salespersons" are hereby amended to read as follows:

3 **5-20.5-14. Revocation, suspension of license -- Probationary period -- Penalties.**

4 (a) The director may upon his or her own motion, and shall, upon the receipt of the
5 written verified complaint of any person initiating a cause under this section, ascertain the facts
6 and, if warranted, hold a hearing for the suspension or revocation of a license. The director has
7 power to refuse a license for cause or to suspend or revoke a license or place a licensee on
8 probation for a period not to exceed one year where it has been obtained by false representation,
9 or by fraudulent act or conduct, or where a licensee, in performing or attempting to perform any
10 of the acts mentioned in this chapter, is found to have committed any of the following acts or
11 practices:

12 (1) Making any substantial misrepresentation;

13 (2) Making any false promise of a character likely to influence, persuade or induce any
14 person to enter into any contract or agreement when he or she could not or did not intend to keep
15 that promise;

16 (3) Pursuing a continued and flagrant course of misrepresentation or making of false
17 promises through salespersons, other persons, or any medium of advertising, or otherwise;

18 (4) Any misleading or untruthful advertising;

- 1 (5) Failing to deposit money or other customers' funds received by a broker or
2 salesperson into an escrow account maintained by the broker which complies with the
3 requirements set forth in § 5-20.5-6, upon execution of a purchase and sales agreement;
- 4 (6) Failing to preserve for three (3) years following its consummation records relating to
5 any real estate transaction as described in the regulations issued by the department;
- 6 (7) Acting for more than one party in a transaction without the knowledge and consent, in
7 writing, of all parties for whom he or she acts;
- 8 (8) Placing a "for sale" or "for rent" sign on any property without the written consent of
9 the owner, or his or her authorized agent;
- 10 (9) Failing to furnish a copy of any listing, sale, lease or other contract relevant to a real
11 estate transaction to all signatories of the contract at the time of execution;
- 12 (10) Failing to specify a definite termination date that is not subject to prior notice, in any
13 listing contract;
- 14 (11) Inducing any party to a contract, sale, or lease to break that contract for the purpose
15 of substitution in lieu of that contract a new contract, where that substitution is motivated by the
16 personal gain of the licensee;
- 17 (12) Accepting a commission or any valuable consideration by a salesperson for the
18 performance of any acts specified in this chapter, from any person, except the licensed real estate
19 broker with whom he or she is affiliated;
- 20 (13) Failing to disclose to an owner his or her intention or true position if he or she
21 directly or indirectly through a third party, purchases for him or herself or acquires or intends to
22 acquire any interest in or any option to purchase property which has been listed with his or her
23 office to sell or lease;
- 24 (14) Being convicted of any criminal felony in a court of competent jurisdiction of this or
25 any other state or federal court, involving dishonesty, breach of trust, forgery, embezzlement,
26 obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, fraud,
27 false dealing or any similar offense(s) or by pleading guilty or nolo contendere to any such
28 criminal offense or offenses;
- 29 (15) Violating any rule or regulation promulgated by the department in the interest of the
30 public and consistent with the provisions of this chapter;
- 31 (16) In the case of a broker licensee, failing to exercise adequate supervision over the
32 activities of his or her licensed salesperson within the scope of this chapter;
- 33 (17) Failing or refusing to provide information requested by the commission or director
34 as the result of a formal or informal complaint to the director which would indicate a violation of

1 this chapter;

2 (18) Soliciting, selling, or offering for sale real property by offering free lots, or
3 conducting lotteries or contests or offering prizes for the purpose of influencing a purchaser or
4 prospective purchaser of real property;

5 (19) Paying or accepting, giving or charging any undisclosed commission, rebate,
6 compensation, or profit or expenditures for a principal, or in violation of this chapter;

7 (20) Any conduct in a real estate transaction, which demonstrates bad faith, dishonesty,
8 untrustworthiness, or incompetence;

9 (21) Failing to have all listing agreements in writing, properly identifying the property
10 and containing all of the terms and conditions of the sale, including the commission to be paid,
11 the signatures of all parties concerned, and a definite expiration date in that contract, which shall
12 not require an owner to notify a broker of his or her intention to terminate. An exclusive agency
13 listing or exclusive right to sell listing shall be clearly indicated in the listing agreement;

14 (22) Accepting a listing based on "net price". In cases where the owner wishes to list in
15 this manner, the agreed-upon commission is added and listings made in the usual manner;

16 (23) Negotiating or attempting to negotiate the sale, exchange, or lease of any real
17 property directly with an owner or lessor knowing that the owner or lessor has an outstanding
18 exclusive listing contract with another licensee covering the same property, except when the real
19 estate broker or salesperson is contacted by the client of another broker regarding a real estate
20 service, and the broker or salesperson has not directly or indirectly initiated those discussions,
21 they may discuss the terms which they might enter into future agency agreement or they may
22 enter into an agency agreement which becomes effective upon termination of any existing
23 exclusive agreement; or they may enter into an agreement for other real estate service not covered
24 by an existing agency relationship;

25 (24) Accepting an exclusive right to sell or lease or an exclusive agency and subsequently
26 failing to make a diligent effort to sell or lease the listed property;

27 (25) Advising against the use of the services of an attorney in any real estate transaction;

28 (26) Representing to any lender or any other party in interest, either verbally or through
29 the preparation of a false sales contract, an amount other than the true and actual sales price;

30 (27) Submitting to an owner a written offer to purchase or lease unless that offer contains
31 the essential terms and conditions of the offer including the manner in which the purchase price is
32 to be paid, and if that offer is contingent upon certain conditions, those conditions shall be clearly
33 stated in the offer, or unless the offer is conditioned upon the later execution of a complete
34 agreement for sale;

1 (28) Paying any sums of money being held in an escrow account to any person, or
2 converting such sums of money for his or her own use, in the event of a failed real estate
3 transaction, without having complied with the department's rules and regulations relative to the
4 transfer of disputed deposit funds to the office of the general treasurer;

5 (29) Advertising to sell, buy, exchange, rent, or lease the property of another in a manner
6 indicating that the offer to sell, buy, exchange, rent, or lease that property is being made by a
7 private party not engaged in the real estate business, nor insert advertisements in any publication
8 containing only a post office or other box number, telephone number, or street address. No
9 salesperson shall advertise the property of another under his or her own name;

10 (30) As a licensed salesperson, failing upon termination of his or her employment or
11 affiliation with a real estate broker and upon demand by the broker to immediately turn over to
12 the broker any and all information, records or other materials obtained during his or her
13 employment whether the information or records were originally given to him or her by the broker
14 or copied from the records of that broker or affiliation or acquired by the salesperson during his
15 or her employment;

16 (31) Offering, promising, giving or paying directly or indirectly, any part or share of his
17 or her commission or compensation arising or accruing from any real estate transaction to any
18 person who is not licensed as a real estate broker, but who by law should be licensed, or who is
19 not a real estate salesperson employed by that licensee;

20 (32) Soliciting the sale, lease, or the listing for sale or lease, of residential property on the
21 ground of loss of value due to the present or prospective entry in the neighborhood of a person or
22 persons of another race, religion, or ethnic origin, nor shall he or she distribute or cause to be
23 distributed material or make statements designed to induce a residential property owner to sell or
24 lease his or her property due to such factors;

25 (33) Failure of the employing broker to notify the director, in writing, within ten (10)
26 days of the termination of a salesperson's employment of contractual relationship, or failure of a
27 salesperson to notify the director, in writing, within ten (10) days of any change in his/her broker
28 affiliation;

29 (34) Failure to report all written offers to the owner prior to the signing of a purchase and
30 sale agreement by the owner; or

31 (35) Failure of agents to provide buyers and sellers of real property with disclosure
32 regarding real estate agency relationships as specified in chapter 20.6 of this title; or

33 (36) Failure of an associate broker to inform the public of associate broker status by not
34 listing associate broker on business cards and correspondence or by informing the public that his

1 or her status in the real estate firm is that of broker.

2 [\(37\) Failure to pay sums of money being held in an escrow account, pursuant to §5-20.5-](#)
3 [26, within ten \(10\) days of receipt of a written release that has been signed by all parties to a](#)
4 [failed real estate transaction.](#)

5 (b) The director is authorized to levy an administrative penalty not exceeding one
6 thousand dollars (\$1,000) for any violation under this section or the rules and regulations of the
7 department of business regulation.

8 **5-20.5-26. Escrows.**

9 (a) Escrow.

10 (1) Escrow accounts.

11 (i) Each real estate firm shall maintain an escrow account under the supervision of the
12 broker qualified to do business in the name and on behalf of the corporate, partnership or
13 association licensee. All those funds paid to a salesperson or paid directly to a broker shall be
14 segregated on the broker's books and deposited in an account in a recognized federally insured
15 financial institution in Rhode Island separate from any account containing funds owned by the
16 broker. A broker or salesperson shall not commingle deposit money or other customers' funds and
17 his or her own funds, use a customer's funds as his or her own, or fail to keep an escrow or trustee
18 account of funds deposited with him or her relating to a real estate transaction, for a period of
19 three (3) years, showing to whom the money belongs, date deposited, date of withdrawal, to
20 whom paid, and any other pertinent information that the commission requires. Those records are
21 to be available to the commission and the department or their representatives, on demand, or upon
22 written notice given to the depository. Each broker/office supervisor shall maintain a monthly
23 report as to the status of that office's escrow account, and is responsible for its accuracy.

24 (ii) A multi-office firm may either have an escrow account for each office or one central
25 escrow account for the firm.

26 (iii) Funds held in escrow may be applied to the commission when earned by the listing
27 company.

28 (iv) Whenever the ownership of any deposit monies received by a broker or salesperson
29 pursuant to this section is in dispute by the parties to a real estate transaction, the broker or
30 salesperson shall deposit the monies with the general treasurer within one hundred eighty (180)
31 days of the date of the original deposit, those monies to be held in trust by the general treasurer
32 until the dispute is mediated, arbitrated, litigated, or otherwise resolved by the parties. The parties
33 to a real estate transaction may agree in writing to extend the time period by which the monies
34 must be deposited with the general treasurer in accordance with regulations promulgated by the

1 department of business regulation.

2 (v) The department of business regulation shall have the authority to promulgate rules
3 and regulations with respect to such escrow accounts and the deposit of monies with the general
4 treasurer.

5 (2) Escrow agents. Funds or deposits placed in escrow may be held by any person or
6 entity legally authorized to hold funds in that capacity, e.g., the real estate broker or attorney.

7 (b) Dual activities. In all real estate transactions in which a broker holds more than one
8 title, e.g., builder, contractor, or insurance agent, all deposit monies received must be placed in
9 the brokers real estate escrow account, unless there is a contractual agreement between the
10 principals to the contrary.

11 (c) Unlawful appropriation. Pursuant to § 11-41-11.1, any licensee to whom any money
12 or other property is entrusted as escrow funds, who intentionally appropriates to the licensee's
13 own use that money or property, or transfers the funds from an escrow account to a company or
14 personal account prior to a closing, is guilty of unlawful appropriation.

15 (d) Release of funds. An escrow agent shall pay sums of money being held in an escrow
16 account as instructed by the parties to a failed real estate transaction, within ten (10) days of
17 receipt of a written release that has been signed by all the parties to the failed real estate
18 transaction.

19 SECTION 2. This act shall take effect on September 1, 2017.

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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 require a real estate broker to release customer or client funds in an
2 escrow account as instructed by the parties to a failed real estate transaction, within ten (10) days
3 of receipt of a written release that has been signed by all the parties.

4 The act would take effect September 1, 2017.

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