

CHAPTER 261
HB 421 – FINAL VERSION

29Jan2014... 2212h
05/15/14 1771s
4Jun2014... 1914CofC

2014 SESSION

13-0544
10/01

HOUSE BILL **421**

AN ACT relative to regulation of real estate brokerage and sales by the real estate commission.

SPONSORS: Rep. D. Eaton, Ches 3

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill makes various changes to the real estate practice act and regulation by the New Hampshire real estate commission, including the investigation and prosecution of unlicensed practice.

This bill is a request of the New Hampshire real estate commission.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT relative to regulation of real estate brokerage and sales by the real estate commission.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 261:1 Real Estate Practice Act; Definition; Broker. Amend the introductory paragraph of RSA
2 331-A:2, III to read as follows:

3 III. "Broker" means any person acting for another on commission or for other compensation,
4 for the promise of such commission or other compensation, or any person licensed under this chapter
5 ***acting on the licensee's own behalf*** who:

6 261:2 Exempted Classes From Licensure. Amend RSA 331-A:4 to read as follows:

7 331-A:4 Exempted Classes. The provisions of this chapter shall not apply to:

8 I. An owner~~], builder or tenant of real estate or to regular employees with respect to~~
9 ~~property owned or leased by the owner, builder, or tenant, or to a prospective purchaser or tenant of~~
10 ~~real estate or to regular employees with respect to property sought to be acquired or leased by the~~
11 ~~purchaser or tenant, and who does not hold himself or herself out as a real estate broker] ***who is not***~~
12 ***a licensee, or the regular employees of an owner of real estate who are not licensees, with***
13 ***respect to the real property of the owner;***

14 ***I-a. A prospective purchaser or tenant who is not a licensee, or the regular***
15 ***employees of a prospective purchaser or tenant who are not licensees, with respect to the***
16 ***real property of the owner;***

17 II. An attorney-in-fact ***who is not a licensee acting under a power of attorney with***
18 ***respect to real property of the principal of the attorney-in-fact;***

19 III. An attorney at law in the performance of duties as an attorney;

20 IV. ~~[An]~~ ***A licensed*** auctioneer selling ***real estate*** at public auction ***or otherwise***
21 ***authorized by RSA 311-B;***

22 V. A public official in the ~~[conduct]~~ ***performance of the duties of the*** official ~~[duties];~~

23 VI. A person or the ~~[person's]~~ regular employees ~~[while such person]~~ ***of a person while the***
24 ***person is not acting as a licensee but*** is acting as a receiver, trustee, administrator, executor,
25 conservator, guardian, or fiduciary, or while acting under court order, ~~[or while acting under]~~ the
26 authority of a will, trust instrument, or other recorded instrument containing a power of sale;

27 VII. Any person owning or operating a park, including the person's regular employees, in

CHAPTER 261
HB 421 – FINAL VERSION
- Page 2 -

1 which manufactured housing to be sold or leased is located, who may, for a fee or commission or
2 other valuable consideration, list, sell, purchase, exchange, or lease such manufactured housing
3 without a license of a broker or salesperson, and who does not hold himself or herself out as a real
4 estate broker;

5 VIII. A corporate consultant who receives a fee from a client based on site searching services
6 rendered in accordance with a written contract, rather than on the completion of any particular
7 transaction and who does not hold himself or herself out as a real estate broker; or

8 IX. A **condominium** unit owners' association that rents condominium ~~[and townhouse]~~
9 units for periods of 30 days or less for the exclusive benefit of the unit owners and the unit owners'
10 association provided **that** such rentals are managed through an on-site rental office that is operated
11 and controlled exclusively by the unit owners' association.

12 261:3 Continuing Education. Amend RSA 331-A:20, II to read as follows:

13 II. ***In reviewing and approving an application for a continuing education course,***
14 ***the commission shall assess the content with the primary purpose of assuring that real***
15 ***estate licensees possess the knowledge, skills, and competence necessary to perform the***
16 ***licensee's duties in the real estate business. The subject matter of the course must be***
17 ***directly related to real estate practice in New Hampshire. Continuing education courses***
18 ***shall consist of the following:***

19 (a) Continuing education 3-hour **core** courses shall cover, but not be limited to, changes
20 in state and federal laws dealing with real estate brokerage, housing, financing of real property and
21 consumer protection as well as changes in state enabling laws dealing with zoning and subdivision
22 practices. The **core** courses shall be ~~[designated as core courses]~~ designed to ~~[improve the licensee's~~
23 ~~knowledge of the real estate business and to]~~ assist the licensee in keeping abreast of changing laws,
24 rules and practices which will affect the interest of the licensee's clients **or customers**.

25 (b) ***Continuing education elective courses shall cover, but not be limited to,***
26 ***property valuation, construction, contract and agency law, ethics, financing and***
27 ***investment, land use and zoning, property management, taxation, environmental issues,***
28 ***and supervision and office management. The elective courses shall be designed to assist***
29 ***the licensee in keeping abreast of changing laws, rules, and practices which affect the***
30 ***interest of the licensee's clients or customers.***

31 261:4 Rulemaking; Continuing Education. Amend RSA 331-A:25, IX to read as follows:

32 IX. A minimum of a 3-hour core course of continuing education for active and inactive license
33 renewal, and an additional ~~[9]~~ **12** elective hours of continuing education for active license renewals.

34 261:5 Disciplinary Actions; Appeals. Amend RSA 331-A:28, III to read as follows:

35 III. The action of the commission in revoking, suspending, or denying a license or
36 accreditation, or levying a fine, shall be subject to appeal to the superior court at the instance of the

CHAPTER 261
HB 421 – FINAL VERSION
- Page 3 -

1 licensee or an accredited individual, institution, or organization, within 30 days after the filing of the
2 commission’s decision. An appeal shall suspend the commission’s decision, *except in the case of*
3 *revocation of license or accreditation*. The record of the hearing of the action of the commission
4 shall be presented to the superior court for review and the superior court shall give the review under
5 this chapter priority on the court calendar. The superior court may confirm, reverse, or modify the
6 commission’s decision, or order a trial de novo without a jury as justice may require.

7 261:6 Penalty; Unlawful Practice Added; Injunction; Fine Authority. Amend RSA 331-A:34 to
8 read as follows:

9 331-A:34 *Unlawful Practice*; Penalty.

10 *I. Whoever, not being licensed or otherwise authorized according to the law of this*
11 *state, shall advertise oneself as engaging in real estate brokerage activity, or shall engage*
12 *in real estate brokerage activity, according to this chapter, or in any way hold oneself out*
13 *as qualified to do so, or call oneself a “real estate salesperson”, “real estate broker”, or*
14 *“real estate licensee”, or whoever does such acts after receiving notice that such person’s*
15 *license has been suspended or revoked, is engaged in unlawful practice.*

16 *II.* Any person [~~acting as a real estate broker or real estate salesperson, without a license,~~]
17 *who engages in unlawful practice* shall be guilty of a class A misdemeanor if a natural person, or
18 guilty of a felony if any other person.

19 *III. The commission, after hearing and upon making an affirmative finding under*
20 *paragraph I, that the person is engaged in unlawful practice, may take action in any one*
21 *or more of the following ways:*

22 (a) *A cease and desist order in accordance with paragraph IV.*

23 (b) *The imposition of a fine not to exceed the amount of any gain or economic*
24 *benefit that the person derived from the violation or \$10,000 for each offense, whichever*
25 *amount is greater.*

26 *IV. The commission is authorized to issue a cease and desist order against any*
27 *person or entity engaged in unlawful practice. The cease and desist order shall be*
28 *enforceable in superior court.*

29 *V. The attorney general, the commission, or the prosecuting attorney of any county*
30 *or municipality where the act of unlawful practice takes place may maintain an action to*
31 *enjoin any person or entity from continuing to do acts of unlawful practice. The action to*
32 *enjoin shall not replace any other civil, criminal, or regulatory remedy. An injunction*
33 *without bond is available to the commission.*

34 261:7 Investigation Procedures. Amend RSA 331-A:29 to read as follows:

35 331-A:29 Investigation Procedures. In addition to the requirements of RSA 541-A and other
36 specific statutes, the commission shall comply with the following procedures when investigating

CHAPTER 261
HB 421 – FINAL VERSION
- Page 4 -

1 complaints ~~[against licensees]~~:

2 I. Upon receipt of a complaint, the executive director or his or her designee shall be
3 responsible for investigation of the complaint. Upon completion of the investigation the investigator
4 shall present the complaint file to a commission member who shall evaluate the complaint. Such
5 commission member may direct the executive director to meet with the complainant and the
6 licensee, ***accredited individual, institution or organization, or person charged with***
7 ***practicing unlawful brokerage activity*** to attempt to reconcile their differences.

8 II. The results of the evaluation shall be presented to the commission by the evaluating
9 member.

10 III. Based on the results of this evaluation, the evaluating commission member shall make a
11 written recommendation to the commission regarding whether a hearing should be held to consider
12 disciplinary action against a licensee, ***accredited individual, institution or organization, or***
13 ***person charged with practicing unlawful brokerage activity***.

14 IV. If the evaluating commission member recommends that a hearing be held, the
15 commission shall schedule such a hearing as required by RSA 331-A:30. The commission may,
16 regardless of the recommendation of the evaluating commission member, elect to hold a hearing on
17 any complaint.

18 V. Disciplinary hearings shall be heard by a hearing panel consisting of at least 3
19 commission members. The hearing panel shall not include the member responsible for evaluating
20 the complaint in question.

21 261:8 Hearing Procedure. Amend RSA 331-A:30 to read as follows:

22 331-A:30 Hearing Procedures. In addition to the requirements of RSA 541-A and other specific
23 statutes, the following shall apply to hearings conducted pursuant to the provisions of this chapter:

24 I. The commission shall give the licensee, ***accredited individual, institution or***
25 ***organization, or person charged with practicing unlawful brokerage activity*** at least 14
26 days' written notice prior to the date of hearing, of the charges to be heard by it, and shall afford
27 such licensee, ***accredited individual, institution or organization, or person charged with***
28 ***practicing unlawful brokerage activity*** an opportunity to be heard in person or by counsel. The
29 hearings shall be held at a time and place established by the commission.

30 II. The commission shall have the power to subpoena and bring before it any person or any
31 relevant records or documents in this state or to take testimony by deposition, in the same manner
32 as is prescribed by law in judicial proceedings. The commission shall keep a complete record of the
33 proceedings in such cases. For this purpose, the commission is authorized to utilize electronic
34 recording or to employ a temporary reporter and fix the reporter's compensation, and the governor is
35 authorized to draw the warrant for said sums out of any money in the treasury not otherwise
36 appropriated. The commission is authorized to charge the ~~[broker, associate broker or salesperson]~~

CHAPTER 261
HB 421 – FINAL VERSION
- Page 5 -

1 *licensee, accredited individual, institution or organization, or person charged with*
2 *practicing unlawful brokerage activity* a reasonable fee for any copies of transcript furnished to
3 such person. Sheriffs and witnesses shall receive the same fees for the service of process and
4 attendance before the commission as are paid to sheriffs and witnesses in matters pending before the
5 superior court.

6 III. The decisions of the commission shall be reached in a timely manner and shall be in
7 writing and officially signed by the hearing panel as set forth under RSA 331-A:29, V. The original
8 of such decisions, when signed, shall be filed in the office of the commission. Copies of the decision
9 shall be mailed to the [~~broker, associate broker or salesperson~~] *licensee, accredited individual,*
10 *institution or organization, or person charged with practicing unlawful brokerage activity*
11 addressed to the place of business, [~~and~~] to the complainant, if any, *and to each party in a*
12 *transaction in which the commission determined the individual was practicing unlawful*
13 *brokerage activity*, within 2 days after the filing.

14 261:9 Effective Date. This act shall take effect 60 days after its passage.

15 Approved: July 28, 2014

16 Effective Date: September 26, 2014