

CHAPTER 207

PROFESSIONS AND OCCUPATIONS

SENATE BILL 99-099

BY SENATORS Anderson and Phillips;
also REPRESENTATIVES Taylor, Coleman, May, McElhany, Scott, Spradley, Stengel, and Vigil.

AN ACT

CONCERNING THE REGULATION OF REAL ESTATE PROFESSIONALS, AND, IN CONNECTION THEREWITH,
EXTENDING THE REAL ESTATE DIVISION AND THE REAL ESTATE COMMISSION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 12-61-101 (4) (f), Colorado Revised Statutes, is amended, and the said 12-61-101 (4) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

12-61-101. Definitions. As used in this part 1, unless the context otherwise requires:

(4) "Real estate salesperson" or "real estate broker" does not apply to any of the following:

(f) Any person, firm, partnership, limited liability company, association, or corporation or any employee or authorized agent thereof, engaged in the act of NEGOTIATING, acquiring, purchasing, assigning, exchanging, selling, LEASING, or dealing in oil and gas or other mineral leases or interests therein or other severed mineral or royalty interests in real property, INCLUDING EASEMENTS, RIGHTS-OF-WAY, PERMITS, LICENSES, AND ANY OTHER INTERESTS IN REAL PROPERTY FOR OR ON BEHALF OF A THIRD PARTY, FOR THE PURPOSE OF, OR FACILITIES RELATED TO, INTRASTATE AND INTERSTATE PIPELINES FOR OIL, GAS, AND OTHER PETROLEUM PRODUCTS, FLOW LINES, GAS GATHERING SYSTEMS, AND NATURAL GAS STORAGE AND DISTRIBUTION;

(q) ANY PERSON, FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, OR CORPORATION OR ANY EMPLOYEE OR AUTHORIZED AGENT THEREOF, ENGAGED IN THE ACT OF NEGOTIATING, PURCHASING, ASSIGNING, EXCHANGING, SELLING, LEASING, OR ACQUIRING RIGHTS-OF-WAY, PERMITS, LICENSES, AND ANY OTHER INTERESTS IN

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

REAL PROPERTY FOR OR ON BEHALF OF A THIRD PARTY FOR THE PURPOSE OF, OR FACILITIES RELATED TO:

(I) TELECOMMUNICATION LINES;

(II) WIRELESS COMMUNICATION FACILITIES;

(III) CATV;

(IV) ELECTRIC GENERATION, TRANSMISSIONS, AND DISTRIBUTION LINES;

(V) WATER DIVERSION, COLLECTION, DISTRIBUTION, TREATMENT, AND STORAGE OR USE; AND

(VI) TRANSPORTATION, SO LONG AS SUCH PERSON, FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, OR CORPORATION INCLUDING ANY EMPLOYEE OR AUTHORIZED AGENT THEREOF DOES NOT REPRESENT ANY DISPLACED PERSON OR ENTITY AS AN AGENT THEREOF IN THE PURCHASE, SALE, OR EXCHANGE OF REAL ESTATE, OR AN INTEREST THEREIN, RESULTING FROM RESIDENTIAL OR COMMERCIAL RELOCATIONS REQUIRED UNDER ANY TRANSPORTATION PROJECT, REGARDLESS OF THE SOURCE OF PUBLIC FUNDING.

SECTION 2. Part 1 of article 61 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

12-61-110.6. Study - repeal. (1) THE DIVISION OF REAL ESTATE SHALL MAKE OR CAUSE TO BE MADE A STUDY OF TRANSFERRING SUPERVISION OF PRIVATE OCCUPATIONAL SCHOOLS OFFERING REAL ESTATE EDUCATION EXCLUSIVELY FROM THE DEPARTMENT OF HIGHER EDUCATION TO THE DIVISION OF REAL ESTATE AND REAL ESTATE COMMISSION. THE STUDY SHALL INCLUDE AN ANALYSIS OF THE FEASIBILITY OF TRANSFERRING THE EDUCATIONAL SUPERVISION TO THE DIVISION, THE ADMINISTRATIVE EFFICIENCIES, COST SAVINGS, AND THE BENEFITS TO THE PUBLIC FROM SUCH A TRANSFER. THE DIVISION SHOULD CONSULT THE PRIVATE OCCUPATIONAL SCHOOL DIVISION OF THE DEPARTMENT OF HIGHER EDUCATION AND MEMBERS OF THE REAL ESTATE PROFESSION, INCLUDING BUT NOT LIMITED TO BROKERS AND SALESPERSONS, FOR THE PURPOSES OF THIS STUDY. THE DIVISION MAY MAKE RECOMMENDATIONS FOR LEGISLATION BASED ON FINDINGS FROM THIS STUDY.

(2) THE DIVISION SHALL REPORT ITS FINDINGS FROM THIS STUDY TO THE BUSINESS AFFAIRS AND LABOR COMMITTEE IN THE SENATE NO LATER THAN OCTOBER 15, 2000. THE REPORT SHALL FULLY EXPLAIN THE FINDINGS OF THE STUDY AND REASONS SUPPORTING THE CONCLUSIONS OF THE DIVISION.

(3) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2001.

SECTION 3. 12-61-103 (6) (b), Colorado Revised Statutes, is amended to read:

12-61-103. Application for license. (6) (b) An applicant for a broker's license who has ~~been licensed as a broker~~ HELD A REAL ESTATE LICENSE in another jurisdiction ~~during a portion of the immediate past two years prior to making such application, which jurisdiction administers a real estate broker's examination,~~ shall

~~be required to successfully complete only the Colorado part of the real estate broker's examination~~ THAT ADMINISTERS A REAL ESTATE BROKER'S EXAMINATION AND THE APPLICANT HAS BEEN LICENSED FOR TWO YEARS PRIOR TO APPLYING FOR A COLORADO LICENSE MAY BE ISSUED A BROKER'S LICENSE IF THE APPLICANT ESTABLISHES THAT HE OR SHE POSSESSES CREDENTIALS AND QUALIFICATIONS THAT ARE SUBSTANTIVELY EQUIVALENT TO THE REQUIREMENTS IN COLORADO FOR LICENSURE BY EXAMINATION. A BROKER'S LICENSE MAY BE ISSUED UNDER THIS PARAGRAPH (b) ONLY IF THE JURISDICTION FROM WHICH THE APPLICANT HOLDS A REAL ESTATE LICENSE ALLOWS THE ISSUANCE OF A REAL ESTATE BROKER'S LICENSE TO APPLICANTS FROM THE STATE OF COLORADO IN SUBSTANTIALLY THE SAME MANNER AS SET FORTH IN THIS PARAGRAPH (b).

SECTION 4. 12-61-103.6, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-61-103.6. Errors and omissions insurance - duties of the commission - certificate of coverage, when required - group plan made available - effect - repeal. (5) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2008. PRIOR TO SUCH REPEAL, THIS FUNCTION OF THE REAL ESTATE COMMISSION SHALL BE REVIEWED AS PROVIDED FOR IN SECTION 24-34-104, C.R.S.

SECTION 5. Part 1 of article 61 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

12-61-108.5. Compilation and publication of passing rates per educational institution for real estate licensure examinations - rules. (1) THE COMMISSION SHALL HAVE THE AUTHORITY TO OBTAIN INFORMATION FROM EACH EDUCATIONAL INSTITUTION AUTHORIZED TO OFFER COURSES IN REAL ESTATE FOR THE PURPOSE OF COMPILING THE NUMBER OF APPLICANTS WHO PASS THE REAL ESTATE LICENSURE EXAMINATION FROM EACH EDUCATIONAL INSTITUTION. THE INFORMATION SHALL INCLUDE THE NAME OF EACH STUDENT WHO ATTENDED THE INSTITUTION AND A STATEMENT OF WHETHER THE STUDENT COMPLETED THE NECESSARY REAL ESTATE COURSES REQUIRED FOR LICENSURE. THE COMMISSION SHALL HAVE ACCESS TO SUCH OTHER INFORMATION AS NECESSARY TO ACCOMPLISH THE PURPOSE OF THIS SECTION. FOR THE PURPOSES OF THIS SECTION, AN "APPLICANT" IS A STUDENT WHO COMPLETED THE REQUIRED EDUCATION REQUIREMENTS AND WHO APPLIED FOR AND SAT FOR THE LICENSURE EXAMINATION.

(2) THE COMMISSION SHALL COMPILE THE INFORMATION OBTAINED IN SUBSECTION (1) OF THIS SECTION WITH APPLICANT INFORMATION RETAINED BY THE COMMISSION. SPECIFICALLY, THE COMMISSION SHALL COMPILE WHETHER THE STUDENT APPLIED FOR THE LICENSURE EXAMINATION AND WHETHER THE APPLICANT PASSED THE LICENSURE EXAMINATION. THE COMMISSION SHALL CREATE STATISTICAL DATA SETTING FORTH:

- (a) THE NAME OF THE EDUCATIONAL INSTITUTION;
- (b) THE NUMBER OF STUDENTS WHO COMPLETED THE NECESSARY REAL ESTATE COURSE REQUIRED FOR LICENSURE;
- (c) WHETHER THE STUDENT REGISTERED AND SAT FOR THE LICENSURE

EXAMINATION; AND

(d) THE NUMBER OF THOSE APPLICANTS WHO PASSED THE LICENSURE EXAMINATION.

(3) THE COMMISSION SHALL PUBLISH THIS STATISTICAL DATA AND MAKE IT AVAILABLE TO THE PUBLIC QUARTERLY.

(4) THE COMMISSION SHALL RETAIN THE STATISTICAL DATA FOR THREE YEARS.

(5) SPECIFIC EXAMINATION SCORES FOR AN APPLICANT WILL BE KEPT CONFIDENTIAL BY THE COMMISSION UNLESS THE APPLICANT AUTHORIZES RELEASE OF SUCH INFORMATION.

(6) THE COMMISSION MAY PROMULGATE RULES FOR THE ADMINISTRATION OF THIS SECTION.

SECTION 6. 12-61-113, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-61-113. Investigation - revocation - actions against licensee. (8) ANY APPLICATION FOR LICENSURE FROM A PERSON WHOSE LICENSE HAS BEEN REVOKED SHALL NOT BE CONSIDERED UNTIL THE PASSAGE OF ONE YEAR FROM THE DATE OF REVOCATION.

SECTION 7. 12-61-123, Colorado Revised Statutes, is amended to read:

12-61-123. Repeal of part. This part 1 is repealed, effective July 1, ~~1999~~ 2008. Prior to such repeal, the real estate division, including the real estate commission, shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 8. 12-61-204, Colorado Revised Statutes, is amended to read:

12-61-204. Repeal of part. This part 2 is repealed, effective July 1, ~~1999~~ 2008. Prior to such repeal, the provisions in this part 2 shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 9. 12-61-302 (9) (c) and (9) (d), Colorado Revised Statutes, are amended, and the said 12-61-302 (9) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

12-61-302. Limitation on payments out of the fund. (9) Notwithstanding any provision of this part 3 to the contrary, the liability of the fund shall not exceed:

(c) For applications filed on or after July 1, 1995, AND BEFORE JULY 1, 1999, twenty thousand dollars per transaction, regardless of the number of persons aggrieved, the number of parcels, or the number of real estate licensees involved in such transaction;

(c.5) FOR APPLICATIONS FILED ON OR AFTER JULY 1, 1999, FIFTY THOUSAND DOLLARS PER TRANSACTION, REGARDLESS OF THE PERSONS AGGRIEVED, THE NUMBER

OF PARCELS, OR THE NUMBER OF REAL ESTATE LICENSEES INVOLVED IN SUCH TRANSACTIONS;

(d) ~~Sixty thousand~~ ONE HUNDRED AND FIFTY THOUSAND dollars for any one licensee, regardless of the number of judgments entered against the licensee, parcels of real estate involved, number of licensees involved, or number of persons aggrieved in such transactions.

SECTION 10. 12-61-303 (3), Colorado Revised Statutes, is amended to read:

12-61-303. Simplified procedure - application for administrative order for payment from the fund. (3) The form provided to the applicant by the commission shall contain, in a prominent place, the following notice to the licensee judgment debtor:

"NOTICE: Based on a judgment entered against you in the above-captioned matter, an application for an administrative order directing payment from the real estate recovery fund has been filed with the real estate commission.

If the real estate commission issues an administrative order for payment from the fund, your real estate license will automatically be revoked when the order is issued and payment is made to the applicant. Any subsequent application for a license shall not be granted until the fund is reimbursed for the amount paid, plus interest at the statutory rate, AND THE PASSAGE OF ONE YEAR FROM THE DATE OF REVOCATION.

If you wish to object to the application, you must file a written objection, setting forth the specific grounds for such objection, with the commission within thirty days after having been served with a copy of the application. If you do not file a written objection, you waive your right to defend against the claim."

SECTION 11. 12-61-304 (2), Colorado Revised Statutes, is amended to read:

12-61-304. Procedure upon objection to payment or denial of application. (2) When a petition is filed with the court pursuant to subsection (1) of this section, the petition shall be accompanied by a notice ~~which~~ THAT shall state as follows:

"NOTICE: Based on a judgment entered against you in the above-captioned matter, a petition for an order directing payment from the recovery fund of the real estate commission has been filed with the court.

If the real estate commission makes a payment from the fund pursuant to a court order based upon this petition, your real estate license will automatically be revoked when the court order becomes final and payment is made. Any subsequent application for a license shall not be granted until the fund is reimbursed for the amount paid, plus interest at the statutory rate, AND THE PASSAGE OF ONE YEAR FROM THE DATE OF REVOCATION.

If you wish to defend against this claim, you must file a written response with the court and mail a copy to the party filing the petition and to the real estate commission within thirty days after having been served with this notice. If you do not file a written response, you waive your right to defend against the claim."

SECTION 12. 12-61-307, Colorado Revised Statutes, is amended to read:

12-61-307. Automatic revocation of license - reinstatement. (1) Should the real estate commission pay from the fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed broker or salesperson, either by administrative order or by order of the court, the license of the broker or salesperson shall be automatically revoked upon the final date of such order.

(2) No such broker or salesperson shall be eligible to be licensed again until such broker or salesperson has repaid in full, plus interest at the statutory rate, the amount paid from the fund on the broker or salesperson's account AND ONE YEAR HAS PASSED FROM THE DATE OF REVOCATION.

SECTION 13. 12-61-408, Colorado Revised Statutes, is amended to read:

12-61-408. Repeal of part. This part 4 is repealed, effective July 1, 1999 2008. Prior to such repeal, the provisions in this part 4 shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 14. 12-61-615, Colorado Revised Statutes, is amended to read:

12-61-615. Repeal of part. This part 6 is repealed, effective July 1, 1999 2008. Prior to such repeal, the provisions in this part 6 shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 15. Repeal. 24-34-104 (28) (a) (II) and (28.5), Colorado Revised Statutes, are repealed as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (28) (a) The following divisions in the department of regulatory agencies shall terminate on July 1, 1999:

(II) ~~The real estate division, including the real estate commission, created by part 4 of article 61 of title 12, C.R.S.~~

(28.5) ~~The function of the real estate commission to make available errors and omissions insurance to licensees pursuant to section 12-61-103.6, C.R.S., shall terminate on July 1, 1999.~~

SECTION 16. 24-34-104 (39) (b), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBPARAGRAPHS to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (39) (b) The following agencies, functions, or both, shall terminate on July 1, 2008:

(VI) THE FUNCTION OF THE REAL ESTATE COMMISSION TO MAKE AVAILABLE ERRORS AND OMISSIONS INSURANCE TO LICENSEES PURSUANT TO SECTION 12-61-103.6, C.R.S.;

(VII) THE REAL ESTATE DIVISION, INCLUDING THE REAL ESTATE COMMISSION, CREATED IN PART 1 OF ARTICLE 61 OF TITLE 12, C.R.S.

SECTION 17. Effective date. This act shall take effect July 1, 1999.

SECTION 18. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 20, 1999