

CHAPTER 12

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 01-1067

BY REPRESENTATIVE(S) Rippy, Cloer, Coleman, Jahn, and Williams S.;
also SENATOR(S) McElhany.

AN ACT

CONCERNING REAL ESTATE BROKER LICENSES, AND, IN CONNECTION THEREWITH, FACILITATING ELECTRONIC TRANSACTIONS, ELIMINATING THE REQUIREMENT THAT A DESIGNATED BROKER BE AN OFFICER, DIRECTOR, OR MEMBER OF A LICENSED ENTITY, AND ADJUSTING DISCIPLINARY PROVISIONS.

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

SECTION 1. 12-61-103 (1), the introductory portion to 12-61-103 (4) (a), and 12-61-103 (7) and (8), Colorado Revised Statutes, are amended to read:

12-61-103. Application for license. (1) All persons desiring to become real estate brokers shall apply to the real estate commission for a license under the provisions of this part 1. Application for a license as a real estate broker shall be made to the commission upon forms OR IN A MANNER prescribed by it.

(4) (a) An applicant for a broker's license shall be at least eighteen years of age. The applicant must furnish proof satisfactory to the commission that the applicant has either received a degree from an accredited degree-granting college or university with a major course of study in real estate or has successfully completed courses of study, approved by the commission, at any accredited college or university or any private occupational school that has a certificate of approval from the private occupational school division in accordance with the provisions of article 59 of this title or that has been approved ~~and~~ BY THE COMMISSION OR licensed by an official state agency of any other state as follows:

(7) (a) Real estate brokers' licenses may be granted to individuals, partnerships, limited liability companies, or corporations. A partnership, limited liability company, or ~~unincorporated association consisting of more than one individual shall designate one of its members to submit an application for a partnership broker's license, a limited liability company shall designate one of its managers to submit an application~~

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

~~for a limited liability company broker's license, and every corporation, in its application for a license, shall designate and appoint one of its directors, who shall also be an officer of the corporation, to submit an application for a corporate broker's license, and such member, manager, or director shall have more than a nominal ownership interest in the partnership, limited liability company, or corporation~~ A QUALIFIED, ACTIVE BROKER TO BE RESPONSIBLE FOR MANAGEMENT AND SUPERVISION OF THE LICENSED ACTIONS OF THE PARTNERSHIP, LIMITED LIABILITY COMPANY, OR CORPORATION AND ALL LICENSEES SHOWN IN THE COMMISSION'S RECORDS AS BEING IN THE EMPLOY OF SUCH ENTITY. The application of the partnership, limited liability company, or corporation and the application of the ~~member, manager, or director~~ BROKER designated by it shall be filed with the real estate commission.

(b) No license shall be issued to any partnership, limited liability company, or corporation unless and until the ~~member, manager, or director~~ BROKER so designated by the partnership, limited liability company, or corporation submits to and passes the examination required by this part 1 on behalf of the partnership, limited liability company, or corporation. Upon such ~~member's, manager's, or officer's~~ BROKER'S successfully passing the examination and upon compliance with all other requirements of law by the partnership, limited liability company, or corporation, as well as by the designated ~~member, manager, or director~~ BROKER, the commission shall issue a broker's license to the partnership, limited liability company, or corporation, which shall bear the name of such ~~member, manager, or director~~ DESIGNATED BROKER, and thereupon the ~~member, manager, or director~~ BROKER so designated shall conduct business as a real estate broker only through the said partnership, limited liability company, or corporation and not for the broker's own account.

(c) If the person so designated is refused a license by the real estate commission or ceases to be the designated broker of such partnership, limited liability company, or corporation, such entity may designate another person to make application for a license. If such person ceases to be the designated broker of such partnership, limited liability company, or corporation, the director may issue a temporary license to prevent hardship for a period not to exceed ninety days to the licensed person so designated. The director may extend a temporary license for one additional period not to exceed ninety days upon proper application and a showing of good cause; if the director refuses, no further extension of a temporary license shall be granted except by the commission. If any ~~member, manager, director,~~ BROKER or employee of any such partnership, limited liability company, or corporation, other than the one designated as provided in this section, desires to act as a real estate broker, such ~~member, manager, director,~~ BROKER or employee shall first obtain a license as a real estate broker as provided in this section and shall pay the regular fee therefor.

(8) The ~~member, manager, or director~~ BROKER designated to act as broker for any partnership, limited liability company, or corporation is personally responsible for the handling of any and all earnest money deposits or escrow or trust funds received or disbursed by said partnership, limited liability company, or corporation. In the event of any breach of duty by the said partnership, limited liability company, or corporation as a fiduciary, any person aggrieved or damaged by the said breach of fiduciary duty shall have a claim for relief against such partnership, limited liability company, or corporation, as well as against the designated ~~member, manager, or director~~ acting as broker, and may pursue said claim against the partnership, limited

liability company, or corporation and the designated ~~member, manager, or director~~ BROKER personally. The said ~~member, manager, or director~~ BROKER may be held responsible and liable for damages based upon such breach of fiduciary duty as may be recoverable against the said partnership, limited liability company, or corporation, and any judgment so obtained may be enforced jointly or severally against said ~~member, manager, or director~~ BROKER personally and the said partnership, limited liability company, or corporation.

SECTION 2. 12-61-104, Colorado Revised Statutes, is amended to read:

12-61-104. Licenses - issuance - contents - display. (1) The commission shall ~~issue~~ MAKE AVAILABLE for each licensee a license in such form and size as said commission shall prescribe and adopt. The real estate license shall show the name of the licensee and shall have imprinted thereon the seal, or a facsimile, of the department of regulatory agencies and, in addition to the foregoing, shall contain such other matter as said commission shall prescribe.

(2) ~~The commission shall issue and deliver to each broker and to each salesperson pocket cards which shall contain the name of the licensee and the imprint of the seal or facsimile as provided in subsection (1) of this section and shall certify that the person whose name appears thereon is a licensed real estate broker or real estate salesperson, as the case may be. Such cards shall be in such form as prescribed by the commission.~~

(3) ~~Each person, partnership, limited liability company, or corporation licensed as a real estate broker shall display such broker's license in a conspicuous place on the premises of the broker's place of business, and the licenses of the salespersons and brokers employed by the broker shall be similarly displayed.~~

SECTION 3. 12-61-107 (2) and (3), Colorado Revised Statutes, are amended to read:

12-61-107. Resident licensee - nonresident licensee - consent to service. (2) Every applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper courts of any county of this state in which a cause of action may arise and in which the plaintiffs may reside by the service of any process or pleading authorized by the laws of this state on the secretary of state, said consent stipulating and agreeing that such service or such process or pleading on said secretary shall be held in all courts to be as valid and binding as if due service had been made upon said applicant in the state of Colorado. Said instrument containing such consent shall be authenticated by the ~~seal thereof, if a corporation, or by the acknowledged signature of an officer or member thereof, if otherwise~~ THE DESIGNATED BROKER.

(3) ~~All such applications except from individuals, shall be accompanied by a certificate signed by the proper officers or managing board certifying~~ SHALL CONTAIN A CERTIFICATION that the broker is authorized to act for the corporation. In case any process or pleading mentioned in this part 1 is served upon the secretary of state, it shall be by duplicate copies, one of which shall be filed in the office of said secretary and the other immediately forwarded by certified mail to the main office of the applicant against which said process or pleading is directed.

SECTION 4. 12-61-108, Colorado Revised Statutes, is amended to read:

12-61-108. Record of licensees - publications. The commission shall maintain a ~~list~~ RECORD of the names and addresses of all licensees licensed under the provisions of parts 1 and 4 of this article, together with such other information relative to the enforcement of said provisions as deemed by the commission to be necessary. Publication of the ~~lists~~ RECORD and of any other information circulated in quantity outside the executive branch shall be in accordance with the provisions of section 24-1-136, C.R.S.

SECTION 5. 12-61-109 (1) and (3), Colorado Revised Statutes, are amended to read:

12-61-109. Change of license status - inactive - cancellation. (1) Immediate notice shall be given in ~~writing~~ A MANNER ACCEPTABLE to the commission by each licensee of any change of business location or employment. A change of business address or employment without notification to the commission shall automatically ~~cancel~~ INACTIVATE the LICENSEE'S license. ~~theretofore issued.~~

(3) In the event that any licensee is discharged by or terminates employment with a broker, it shall be the joint duty of both such parties to immediately notify the commission. ~~in writing.~~ Either party may ~~deliver or mail~~ FURNISH such notice IN A MANNER ACCEPTABLE to the commission. The party giving notice shall notify the other party in person or in writing of the termination of employment.

SECTION 6. 12-61-110 (5), Colorado Revised Statutes, is amended to read:

12-61-110. License fees - partnership, limited liability company, and corporation licenses. (5) The suspension, expiration, or revocation of a real estate broker's license shall automatically ~~cancel~~ INACTIVATE every real estate broker's or real estate salesperson's license where the holder of such license is shown in the commission records to be in the employ of the broker whose license has expired or has been suspended or revoked pending notification to the commission by the employed licensee of a change of employment.

SECTION 7. 12-61-113 (1) (i), (1) (m), (1) (w), and (2), Colorado Revised Statutes, are amended to read:

12-61-113. Investigation - revocation - actions against licensee. (1) The commission, upon its own motion, may, and, upon the complaint in writing of any person, shall, investigate the activities of any licensee or any person who assumes to act in such capacity within the state, and the commission, after the holding of a hearing pursuant to section 12-61-114, has the power to impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense and to censure a licensee, to place the licensee on probation and to set the terms of probation, or to temporarily suspend or permanently revoke a license when the licensee has performed, is performing, or is attempting to perform any of the following acts and is guilty of:

(i) Failing to maintain possession, for future use or inspection by an authorized representative of the commission, for a period of ~~seven~~ FOUR years, of the documents

or records prescribed by the rules and regulations of the commission or to produce such documents or records upon reasonable request by the commission or by an authorized representative of the commission;

(m) Conviction of, entering a plea of guilty to, or entering a plea of nolo contendere to any crime in article 3 of title 18, C.R.S., in ~~part~~ PARTS 1, 2, 3, AND 4 of article 4 of title 18, C.R.S., ~~or~~ in part 1, 2, 3, ~~or~~ 4, 5, 7, OR 8 of article 5 of title 18, C.R.S., IN PART 3 OF ARTICLE 8 OF TITLE 18, C.R.S., IN ARTICLE 15 OF TITLE 18, C.R.S., IN ARTICLE 17 OF TITLE 18, C.R.S., or any other like crime under Colorado law, federal law, or the laws of other states. A certified copy of the judgment of a court of competent jurisdiction of such conviction or other official record indicating that such plea was entered shall be conclusive evidence of such conviction or plea in any hearing under this part 1.

(w) Failing to keep records documenting proof of completion of the continuing education requirements in accordance with section 12-61-110.5 for a period of ~~seven~~ FOUR years from the date of compliance with said section.

(2) In the event a firm, partnership, limited liability company, association, or corporation operating under the license of a ~~member, manager, or officer~~ BROKER designated and licensed as representative of said firm, partnership, limited liability company, association, or corporation is guilty of any of the foregoing acts, the commission may suspend or revoke the right of the said firm, partnership, limited liability company, association, or corporation to conduct its business under the license of said ~~member, manager, or director~~ BROKER, whether or not the designated ~~member, manager, or director~~ BROKER had personal knowledge thereof and whether or not the commission suspends or revokes the individual license of said ~~member, manager, or director~~ BROKER.

SECTION 8. Effective date - applicability. This act shall take effect upon passage and shall apply to acts committed on or after said date.

SECTION 9. 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: March 9, 2001