

HOUSE BILL 387

Introduced by Endy, et al.

1/28	Introduced
1/28	Referred to Business & Economic Development
1/28	First Reading
2/10	Hearing
2/10	Tabled in Committee

1 House BILL NO. 387
 2 INTRODUCED BY Sen. Whalen 1st Reg.
 3 Rep. McClellan 1st Reg.
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A REAL
 5 ESTATE BROKER MUST BE INVOLVED IN THE AUCTIONING OF
 6 PROPERTY; AND AMENDING SECTIONS 37-51-102 AND 37-51-103,
 7 MCA."
 8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 **Section 1.** Section 37-51-102, MCA, is amended to read:

11 "37-51-102. Definitions. Unless the context requires
 12 otherwise, in this chapter the following definitions apply:

13 (1) "Account" means the real estate recovery account
 14 established in 37-51-501.

15 (2) "Board" means the board of realty regulation
 16 provided for in 2-15-1867.

17 (3) "Broker" includes an individual who:

18 (a) for another or for valuable consideration or who
 19 with the intent or expectation of receiving valuable
 20 consideration negotiates or attempts to negotiate the
 21 listing, sale, purchase, rental, exchange, or lease of real
 22 estate or of the improvements on real estate or collects
 23 rents or attempts to collect rents;

24 (b) is employed by or on behalf of the owner or lessor
 25 of real estate to conduct the sale, leasing, subleasing,

1 auctioning, or other disposition of real estate for
 2 consideration;

3 (c) engages in the business of charging an advance fee
 4 or contracting for collection of a fee in connection with a
 5 contract by which he the individual undertakes primarily to
 6 promote the sale, lease, or other disposition of real estate
 7 in this state through its listing in a publication issued
 8 primarily for this purpose or for referral of information
 9 concerning real estate to brokers;

10 (d) makes the advertising, sale, lease, or other real
 11 estate information available by public display to potential
 12 buyers and who aids, attempts, or offers to aid, for a fee,
 13 any person in locating or obtaining any real estate for
 14 purchase or lease;

15 (e) aids or attempts or offers to aid, for a fee, any
 16 person in locating or obtaining any real estate for purchase
 17 or lease;

18 (f) receives a fee, commission, or other compensation
 19 for referring to a licensed broker or salesman salesperson
 20 the name of a prospective buyer or seller of real property;
 21 or

22 (g) advertises or holds--himself-out-as represents to
 23 the public that the individual is engaged in any of the
 24 activities referred to in subsections (3)(a) through (3)(f).

25 (4) "Broker associate" means a broker who associates

1 with a broker owner and does not own an interest in a real
2 estate firm.

3 (5) "Broker owner" means a broker who owns or has a
4 financial interest in a real estate firm.

5 (6) "Department" means the department of commerce
6 provided for in Title 2, chapter 15, part 18.

7 (7) "Franchise agreement" means a contract or agreement
8 by which:

9 (a) a franchisee is granted the right to engage in
10 business under a marketing plan prescribed in substantial
11 part by the franchisor;

12 (b) the operation of the franchisee's business is
13 substantially associated with the franchisor's trademark,
14 trade name, logotype, or other commercial symbol or
15 advertising designating the franchisor; and

16 (c) the franchisee is required to pay, directly or
17 indirectly, a fee for the right to operate under the
18 agreement.

19 (8) "Person" includes individuals, partnerships,
20 associations, and corporations, foreign and domestic, except
21 that when referring to a person licensed under this chapter,
22 it means an individual.

23 (9) "Real estate" includes leaseholds as well as any
24 other interest or estate in land, whether corporeal,
25 incorporeal, freehold, or nonfreehold and whether the real

1 estate is situated in this state or elsewhere.

2 (10) "Salesman" "Salesperson" includes an individual who
3 for a salary, commission, or compensation of any kind is
4 associated, either directly, indirectly, regularly, or
5 occasionally, with a real estate broker to sell, purchase,
6 or negotiate for the sale, purchase, exchange, or renting of
7 real estate."

8 **Section 2.** Section 37-51-103, MCA, is amended to read:

9 "37-51-103. **Exemptions.** (1) An act performed for
10 compensation of any kind in the buying, selling, exchanging,
11 leasing, or renting of real estate or in negotiating
12 therefor for others, except as specified in this section,
13 shall constitute the person performing any of the acts a
14 real estate broker or real estate salesman salesperson. The
15 provisions of this chapter may not:

16 (a) apply to:

17 (i) any person who, as owner or lessor, ~~shall--perform~~
18 performs any acts listed in subsection (1) with reference to
19 property owned or leased by himself the person; or

20 (ii) to an auctioneer employed by the owner or lessor
21 and by a broker to aid and assist in conducting a public
22 sale held by the owner or lessor;

23 (b) apply to any person acting as attorney-in-fact
24 under a duly executed special or general power of attorney
25 from the owner of any real estate authorizing the purchase,

1 sale, exchange, renting, or leasing of any real estate,
2 unless the person acting as attorney-in-fact does so
3 regularly or consistently for a person or persons, for or
4 with the expectation of receiving a fee, commission, or
5 other valuable consideration in conjunction with a business
6 or for the purpose of avoiding license requirements;

7 (c) be construed to include in any way the services
8 rendered by any attorney at law in the performance of his
9 the attorney's duty as an attorney at law;

10 (d) apply to any person duly appointed by a court for
11 purpose of evaluation or appraising an estate in a probate
12 matter;

13 (e) be held to include, while acting as such, a
14 receiver, a trustee in bankruptcy, an administrator or
15 executor, any person selling real estate under order of any
16 court, a trustee under a trust agreement, deed of trust, or
17 will, or an auctioneer employed by a receiver, trustee in
18 bankruptcy, administrator, executor, or trustee to aid and
19 assist in conducting a public sale held by the officer;

20 (f) apply to public officials in the conduct of their
21 official duties;

22 (g) apply to any person, partnership, association, or
23 corporation, foreign or domestic, performing any act with
24 respect to prospecting, leasing, drilling, or operating land
25 for hydrocarbons and hard minerals or disposing of any

1 hydrocarbons, hard minerals, or mining rights therein,
2 whether upon a royalty basis or otherwise; or

3 (h) apply to persons acting as managers of housing
4 complexes for low-income persons, which are subsidized,
5 directly or indirectly, by this state or an agency or
6 subdivision thereof of the state or by the government of the
7 United States or an agency thereof of the United States.

8 (2) The provisions of this chapter do not apply to a
9 newspaper or other publication of general circulation or to
10 a radio or television station engaged in the normal course
11 of business."

12 NEW SECTION. **Section 3.** Code commissioner instruction.
13 Wherever the term "salesman" appears in Title 37, chapter
14 51, or in legislation enacted by the 1993 legislature that
15 is to be codified in Title 37, chapter 51, the code
16 commissioner is instructed to substitute the term
17 "salesperson".

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