

HOUSE BILL 466

Introduced by Mills, et al.

2/04	Introduced
2/04	Referred to Judiciary
2/04	First Reading
2/11	Hearing
2/16	Tabled in Committee

1 House BILL NO. 766
2 INTRODUCED BY Norm MacLean, Larry B. Lawrence,
3 Storall, Bennett Emory, Wolfgang Clark Vogel
4 A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE
5 RESPONSIBILITY OF A BROKER OWNER OF A REAL ESTATE FIRM FOR
6 THE ACTS OF A BROKER ASSOCIATE; CLARIFYING THAT THE
7 DEFINITION OF REAL ESTATE SALESPERSON FOR PURPOSES OF REALTY
8 REGULATION DOES NOT INCLUDE A BROKER; AND AMENDING SECTIONS
9 37-51-102 AND 37-51-321, MCA."

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

12 NEW SECTION. **Section 1. Limit on liability of a broker**
13 **owner for action of a broker associate. (1) A broker owner**
14 **is not liable for the acts of a broker associate unless the**
15 **broker owner's own conduct is negligent, willful, or wanton.**
16 **(2) For purposes of this section, the terms "broker**
17 **owner" and "broker associate" have the meaning given in**
18 **37-51-102.**

19 **Section 2.** Section 37-51-102, MCA, is amended to read:

20 "37-51-102. Definitions. Unless the context requires
21 otherwise, in this chapter the following definitions apply:

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

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

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

2 (a) for another or for valuable consideration or who
3 with the intent or expectation of receiving valuable
4 consideration negotiates or attempts to negotiate the
5 listing, sale, purchase, rental, exchange, or lease of real
6 estate or of the improvements on real estate or collects
7 rents or attempts to collect rents;

8 (b) is employed by or on behalf of the owner or lessor
9 of real estate to conduct the sale, leasing, subleasing, or
10 other disposition of real estate for consideration;

11 (c) engages in the business of charging an advance fee
12 or contracting for collection of a fee in connection with a
13 contract by which he the individual undertakes primarily to
14 promote the sale, lease, or other disposition of real estate
15 in this state through its listing in a publication issued
16 primarily for this purpose or for referral of information
17 concerning real estate to brokers;

18 (d) makes the advertising, sale, lease, or other real
19 estate information available by public display to potential
20 buyers and who aids, attempts, or offers to aid, for a fee,
21 any person in locating or obtaining any real estate for
22 purchase or lease;

23 (e) aids or attempts or offers to aid, for a fee, any
24 person in locating or obtaining any real estate for purchase
25 or lease;

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

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

(4) "Broker associate" means a broker who associates with a broker owner and does not own an interest in a real estate firm.

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

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

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

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

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

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the

agreement.

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

(9) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

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

Section 3. Section 37-51-321, MCA, is amended to read:

"37-51-321. Revocation or suspension of license -- initiation of proceedings -- grounds. (1) The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate salesman salesperson, subject to 37-1-101 and 37-1-121, and may revoke or suspend a license issued under this chapter when the broker or salesman salesperson has been found guilty by a majority of the board of any of the following practices:

1 †1†(a) intentionally misleading, untruthful, or
 2 inaccurate advertising, whether printed or by radio,
 3 display, or other nature, which advertising in any material
 4 particular or in any material way misrepresents any
 5 property, terms, values, policies, or services of the
 6 business conducted. A broker who operates under a franchise
 7 agreement engages in misleading, untruthful, or inaccurate
 8 advertising if in using the franchise name he the broker
 9 does not incorporate his the broker's own name in the
 10 franchise name or logotype or does not conspicuously
 11 display, on his the letterhead and other printed materials
 12 available to the public, a statement that his the office is
 13 independently owned and operated. The board may not adopt
 14 advertising standards more stringent than those set forth in
 15 this subsection.

16 †2†(b) making any false promises of a character likely
 17 to influence, persuade, or induce;

18 †3†(c) pursuing a continued and flagrant course of
 19 misrepresentation or making false promises through agents or
 20 salesmen salespersons or any medium of advertising or
 21 otherwise;

22 †4†(d) use of the term "realtor" by a person not
 23 authorized to do so or using another trade name or insignia
 24 of membership in a real estate organization of which the
 25 licensee is not a member;

1 †5†(e) failing to account for or to remit money coming
 2 into his the person's possession belonging to others;

3 †6†(f) accepting, giving, or charging an undisclosed
 4 commission, rebate, or profit on expenditures made for a
 5 principal;

6 †7†(g) acting in a dual capacity of broker and
 7 undisclosed principal in a transaction;

8 †8†(h) guaranteeing, authorizing, or permitting a
 9 person to guarantee future profits which may result from the
 10 resale of real property;

11 †9†(i) offering real property for sale or lease without
 12 the knowledge and consent of the owner or his the owner's
 13 authorized agent or on terms other than those authorized by
 14 the owner or his the owner's authorized agent;

15 †10†(j) inducing a party to a contract of sale or lease
 16 to break the contract for the purpose of substituting a new
 17 contract with another principal;

18 †11†(k) accepting employment or compensation for
 19 appraising real property contingent on the reporting of a
 20 predetermined value or issuing an appraisal report on real
 21 property in which he the broker has an undisclosed interest;

22 †12†(l) negotiating a sale, exchange, or lease of real
 23 property directly with an owner or lessee if he the person
 24 knows that the owner has a written, outstanding contract in
 25 connection with the property granting an exclusive agency to

1 another broker;

2 †13†(m) soliciting, selling, or offering for sale real
3 property by conducting lotteries for the purpose of
4 influencing a purchaser or prospective purchaser of real
5 property;

6 †14†(n) representing or attempting to represent a real
7 estate broker other than the employer without the express
8 knowledge or consent of the employer;

9 †15†(o) failing voluntarily to furnish a copy of a
10 written instrument to a party executing it at the time of
11 its execution;

12 †16†(p) paying a commission in connection with a real
13 estate sale or transaction to a person who is not licensed
14 as a real estate broker or real estate ~~salesman~~ salesperson
15 under this chapter;

16 †17†(q) intentionally violating a rule adopted by the
17 board in the interests of the public and in conformity with
18 this chapter;

19 †18†(r) failing, if a ~~salesman~~ salesperson, to place,
20 as soon after receipt as is practicably possible, in the
21 custody of ~~his~~ the registered broker, deposit money or other
22 money entrusted to ~~him~~ the individual as ~~salesman~~
23 salesperson by a person;

24 †19†(s) demonstrating ~~his~~ unworthiness or incompetency
25 to act as a broker or ~~salesman~~ salesperson; or

1 †20†(t) conviction of a felony.

2 (2) A broker owner is not subject to board discipline
3 for the acts of a broker associate unless the broker owner's
4 own conduct is negligent, willful, or wanton."

5 NEW SECTION. Section 4. Codification instruction.
6 [Section 1] is intended to be codified as an integral part
7 of Title 27, chapter 1, part 7, and the provisions of Title
8 27, chapter 1, part 7, apply to [section 1].

9 NEW SECTION. Section 5. Code commissioner instruction.
10 Wherever the term "salesman" appears in Title 37, chapter
11 51, or in material to be codified in Title 37, chapter 51,
12 the code commissioner shall change the term to "salesperson"
13 and make any corresponding changes in style.

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