

SENATE BILL NO. 111

INTRODUCED BY HARP
BY REQUEST OF THE BOARD OF REALTY REGULATION

IN THE SENATE

JANUARY 8, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
JANUARY 23, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 25, 1993	PRINTING REPORT.
	SECOND READING, DO PASS AS AMENDED.
JANUARY 26, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 41; NOES, 8.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 27, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
	FIRST READING.
MARCH 3, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 6, 1993	SECOND READING, CONCURRED IN.
MARCH 9, 1993	THIRD READING, CONCURRED IN. AYES, 90; NOES, 7.
MARCH 10, 1993	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 12, 1993	RECEIVED FROM HOUSE.
	SECOND READING, AMENDMENTS CONCURRED IN.

MARCH 13, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. III
2 INTRODUCED BY HARP
3 BY REQUEST OF THE BOARD OF REALTY REGULATION

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A PROPERTY
6 MANAGER'S LICENSE; DEFINING "PROPERTY MANAGER" AND THE
7 PRACTICE OF PROPERTY MANAGEMENT; PROVIDING QUALIFICATIONS
8 FOR A LICENSE; PROVIDING PENALTIES; AMENDING SECTION
9 37-51-102, MCA; AND PROVIDING AN EFFECTIVE DATE."

10
11 STATEMENT OF INTENT

12 A statement of intent is required for this bill because
13 it delegates rulemaking authority to the board of realty
14 regulation to provide for the licensure and regulation of
15 real estate property managers. The legislature intends that
16 the board have general authority to adopt rules in regard to
17 licensing procedures, including but not limited to issuance
18 of licenses, administration of examinations, establishment
19 of criteria for grading of examinations, promulgation of
20 disciplinary standards for licensees, establishment of fee
21 schedules consistent with the program area costs, and
22 provisions for investigation of complaints against
23 licensees.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:



1 **Section 1.** Section 37-51-102, MCA, is amended to read:
2 "37-51-102. Definitions. Unless the context requires
3 otherwise, in this chapter the following definitions apply:
4 (1) "Account" means the real estate recovery account
5 established in 37-51-501.
6 (2) "Board" means the board of realty regulation
7 provided for in 2-15-1867.
8 (3) "Broker" includes an individual who:
9 (a) for another or for valuable consideration or who
10 with the intent or expectation of receiving valuable
11 consideration negotiates or attempts to negotiate the
12 listing, sale, purchase, rental, exchange, or lease of real
13 estate or of the improvements on real estate or collects
14 rents or attempts to collect rents;
15 (b) is employed by or on behalf of the owner or lessor
16 of real estate to conduct the sale, leasing, subleasing, or
17 other disposition of real estate for consideration;
18 (c) engages in the business of charging an advance fee
19 or contracting for collection of a fee in connection with a
20 contract by which he the individual undertakes primarily to
21 promote the sale, lease, or other disposition of real estate
22 in this state through its listing in a publication issued
23 primarily for this purpose or for referral of information
24 concerning real estate to brokers;
25 (d) makes the advertising, sale, lease, or other real

1 estate information available by public display to potential
2 buyers and who aids, attempts, or offers to aid, for a fee,
3 any person in locating or obtaining any real estate for
4 purchase or lease;

5 (e) aids or attempts or offers to aid, for a fee, any
6 person in locating or obtaining any real estate for purchase
7 or lease;

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

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

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

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

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

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

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

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

5 (c) the franchisee is required to pay, directly or
6 indirectly, a fee for the right to operate under the
7 agreement.

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

12 (9) "Property manager" includes a person who for a
13 salary, commission, or compensation of any kind engages in
14 the leasing, renting, subleasing, or other transfer of
15 possession of real estate belonging to others without
16 transfer of the title to the property, pursuant to [sections
17 2 and 3].

18 ~~(9)(10)~~ "Real estate" includes leaseholds as well as any
19 other interest or estate in land, whether corporeal,
20 incorporeal, freehold, or nonfreehold and whether the real
21 estate is situated in this state or elsewhere.

22 ~~(10)(11)~~ "Salesman" includes an individual who for a
23 salary, commission, or compensation of any kind is
24 associated, either directly, indirectly, regularly, or
25 occasionally, with a real estate broker to sell, purchase,

1 or negotiate for the sale, purchase, exchange, or renting of
2 real estate."

3 NEW SECTION. **Section 2.** License required to manage
4 property. It is unlawful for a person to engage in or
5 conduct business, directly or indirectly, or to advertise as
6 a property manager within this state without having met the
7 qualifications for licensure as a property manager and
8 having been granted a license by the board.

9 NEW SECTION. **Section 3.** Definition of property
10 management -- exemptions from application. (1) An act
11 performed for compensation of any kind in the leasing,
12 renting, subleasing, or other transfer of possession of real
13 estate owned by another without transfer of the title to the
14 real estate, except as specified in this section,
15 constitutes the practice of property management. The
16 provisions of this chapter do not apply to:

17 (a) a dependent of the owner of the real estate, as
18 defined in 26 U.S.C. 152, on [the effective date of this
19 act];

20 (b) a person who leases no more than four residential
21 real estate units;

22 (c) a person acting as attorney-in-fact under a power
23 of attorney from the owner of real estate who authorizes the
24 final consummation of any contract for the renting or
25 leasing of the real estate. This exemption is meant to

1 exclude a single or irregular transaction and may not be
2 routinely used to escape the necessity of obtaining a
3 license.

4 (d) an attorney at law in the performance of duties as
5 an attorney;

6 (e) a receiver, trustee in bankruptcy, personal
7 representative, person acting in regard to real estate
8 pursuant to a court order, or a trustee under a trust
9 agreement, deed of trust, or will;

10 (f) an officer of the state or any of its political
11 subdivisions in the conduct of official duties; or

12 (g) a person acting as a manager of a housing complex
13 for low-income individuals subsidized either directly or
14 indirectly by the state, any agency or political subdivision
15 of the state, or the government or an agency of the United
16 States.

17 (2) A licensed real estate broker on active status or a
18 licensed real estate salesman on active status and acting
19 under the supervision of a real estate broker may act as a
20 property manager without meeting any qualifications in
21 addition to those required for licensure as a real estate
22 broker or real estate salesman.

23 NEW SECTION. **Section 4.** Qualification of property
24 manager applicants -- examination -- form of licenses. (1)
25 The board by rule shall require an applicant for licensure

to provide information that the board believes is necessary to ensure that a person granted a property manager license is of good repute and competent to transact the business of a property manager in a manner that safeguards the welfare and safety of the public.

(2) (a) The board shall require an applicant for a property manager license to:

(i) apply for licensure to the department;

(ii) furnish written evidence that the applicant has completed the number of classroom hours that the board determines appropriate in a course of study approved by the board and taught by instructors approved by the board; and

(iii) satisfactorily complete an examination dealing with the material taught in the course of study.

(b) The course of study must include the subjects of real estate leasing principles, real estate leasing law, and related topics.

(3) Examinations must be given at least once every 4 months at places within the state that the board prescribes. The board shall establish by rule the contents of and requirements to pass the examination.

(4) An applicant for licensure as a property manager must be at least 18 years of age and must have graduated from an accredited high school or completed an equivalent education as determined by the board.

(5) The board shall prescribe the form of the license, and the license must bear the seal of the board. A property manager shall display the license conspicuously in the property manager's place of business.

(6) The department shall prepare and deliver annually to the licensee a pocket card in a form prescribed by the board.

NEW SECTION. Section 5. Annual renewal -- continuing education -- fees. (1) Annual fees for renewal of the property manager license are due and payable during the month of October. Failure to remit the annual fee before November 15 automatically cancels the license. The board shall establish by rule penalty fees for late renewals.

(2) The board shall prescribe by rule requirements for continuing education that applicants shall satisfy before they are allowed to renew their licenses.

(3) The fees prescribed by the board must be charged by the department and paid into the state special revenue fund for the use of the board, subject to 37-1-101(6).

NEW SECTION. Section 6. Property manager's office -- notice of change of address. A property manager shall maintain a fixed office in this state at which the original license of the property manager must be prominently displayed. The office manager must be designated on the license. If the property manager changes the location of the

1 office, the property manager shall notify the department of
2 the new address within 10 days after the change of address.

3 NEW SECTION. Section 7. Revocation, suspension, or
4 denial of license -- initiation of proceedings -- grounds.

5 (1) The board may on its own motion and shall, on the sworn
6 written complaint of a person, investigate the actions of a
7 property manager licensee, subject to 37-1-101 and 37-1-121.
8 The board may revoke or suspend a license, place the
9 licensee on probation, issue a letter of censure or
10 reprimand to the licensee, or levy a fine in an amount not
11 to exceed \$5,000, proceeds of which must be placed in the
12 state general fund, if the licensee:

13 (a) is guilty of fraud or deceit in procuring or
14 attempting to procure a license;

15 (b) is unfit or incompetent by reason of negligence,
16 habit, or other causes;

17 (c) has demonstrated unworthiness, incompetency, or
18 lack of honesty;

19 (d) is guilty of unprofessional conduct as defined by
20 regulations prescribed by the board; or

21 (e) has willfully or repeatedly superseded the
22 authority of the license by selling or attempting to sell
23 real property or otherwise has willfully or repeatedly
24 violated [sections 2 through 9].

25 (2) The board may deny an application for licensure if

1 the applicant:

2 (a) made untrue or fraudulent statements in support of
3 the application;

4 (b) failed to meet the requirements stated in [section
5 4] for licensing; or

6 (c) violated any of the grounds set forth in this
7 section, that would be grounds for suspension or revocation
8 of a license if a license had already been issued.

9 NEW SECTION. Section 8. Transactions with nonlicensed
10 persons unlawful -- action for compensation limited to
11 licensees. (1) It is unlawful for a licensed property
12 manager to employ or compensate, directly or indirectly, a
13 person who is not a licensed property manager for performing
14 the acts regulated by [sections 2 through 9].

15 (2) An action may not be brought or maintained in the
16 courts for the collection of compensation for the lease of
17 real estate unless the plaintiff first alleges that the
18 plaintiff was licensed or was authorized to act without a
19 license at the time the alleged cause of action or claim
20 arose.

21 NEW SECTION. Section 9. Penalties -- criminal --
22 civil. (1) A person who acts without a license or while a
23 license is suspended or revoked or who violates any
24 provision of [sections 2 through 9] is guilty of a
25 misdemeanor. For a first conviction, the person shall be

1 punished by a fine of not less than \$100 or more than \$500
2 or by imprisonment for a term not to exceed 90 days, or
3 both. Upon conviction of a second or subsequent offense, the
4 person shall be punished by a fine of not less than \$500 or
5 more than \$2,000 or by imprisonment for a term not to exceed
6 6 months, or both.

7 (2) If a person is determined in a civil action to have
8 received any money or the equivalent as a fee, commission,
9 or other compensation while violating the provisions of
10 [sections 2 through 9], the person is also liable for a
11 penalty of not less than the amount received and not more
12 than three times the amount received, as the court may
13 determine.

14 NEW SECTION. **Section 10.** Codification instruction.
15 [Sections 2 through 9] are intended to be codified as an
16 integral part of Title 37, chapter 51, and the provisions of
17 Title 37, chapter 51, apply to [sections 2 through 9].

18 NEW SECTION. **Section 11.** Effective date. [This act] is
19 effective July 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0111, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

The bill creates a property manager's license; defines both property manager and the practice thereof; provides qualifications for licensure and penalties.

ASSUMPTIONS:

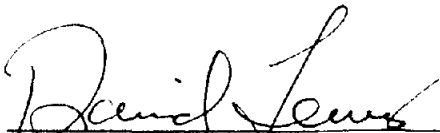
1. There will need to be 3 additional board meetings for 5 members the first year and 2 additional board meetings the second year, costing \$1,000 per meeting.
2. There will be 250 examinations the first year and 30 the second year.
3. There will be 250 new licenses the first year, and 30 new licenses and 250 renewals the second year.
4. The examination fees will be \$40, the new license fees \$40, and the renewal fees will be \$20.

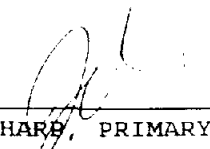
FISCAL IMPACT:

	FY94			FY95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
Personal Services	57,856	59,356	1,500	58,218	59,218	1,000
Operating Expenses	195,809	214,309	18,500	196,751	203,151	6,400
Capital Outlay	0	0	0	0	0	0
Benefits & Claims	0	0	0	0	0	0
Total	253,665	273,665	20,000	254,969	262,369	7,400
<u>Revenues:</u>						
Fees (02)	272,000	292,000	20,000	272,000	279,400	7,400
<u>Net Impact:</u>	<u>18,335</u>	<u>18,335</u>	<u>0</u>	<u>17,031</u>	<u>17,031</u>	<u>0</u>

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The bill will allow property managers to become licensed without the need of becoming licensed as real estate brokers.

 1-12-93
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 1/13/93
 JOHN HARE, PRIMARY SPONSOR DATE

Fiscal Note for SB0111, as introduced

SB 111

APPROVED BY COMM. ON
BUSINESS & INDUSTRY

SENATE BILL NO. 111

INTRODUCED BY HARP

BY REQUEST OF THE BOARD OF REALTY REGULATION

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A PROPERTY
MANAGER'S LICENSE; DEFINING "PROPERTY MANAGER" AND THE
PRACTICE OF PROPERTY MANAGEMENT; PROVIDING QUALIFICATIONS
FOR A LICENSE; PROVIDING PENALTIES; CREATING EXEMPTIONS FROM
REAL ESTATE AND PROPERTY MANAGEMENT LICENSING; AMENDING
SECTION 37-51-102, MCA; AND PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because
it delegates rulemaking authority to the board of realty
regulation to provide for the licensure and regulation of
real estate property managers. The legislature intends that
the board have general authority to adopt rules in regard to
licensing procedures, including but not limited to issuance
of licenses, administration of examinations, establishment
of criteria for grading of examinations, promulgation of
disciplinary standards for licensees, establishment of fee
schedules consistent with the program area costs, and
provisions for investigation of complaints against
licensees.

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

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

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

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

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

(3) "Broker" includes an individual who:

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

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

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

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

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

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

(g) ~~advertises or holds-himself-out-as~~ represents to the public that the individual 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) "Property manager" includes a person who for a salary, commission, or compensation of any kind engages in the BUSINESS OF leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to [sections 2 and 3].

~~(9)~~(10) "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)~~(11) "Salesman" includes an individual 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."

NEW SECTION. Section 2. License required to manage property. It is unlawful for a person to engage in or conduct business, directly or indirectly, or to advertise as a property manager within this state without having met the qualifications for licensure as a property manager and having been granted a license by the board.

NEW SECTION. Section 3. Definition of property management -- exemptions from application. (1) An act performed for compensation of any kind in the leasing, renting, subleasing, or other transfer of possession of real estate owned by another without transfer of the title to the real estate, except as specified in this section, constitutes the practice of property management. The provisions of this chapter do not apply to:

(a) a dependent RELATIVE of the owner of the real estate, ~~as defined in 26-B.S.C. 152, on the effective date of this act~~, DEFINED AS FOLLOWS:

(I) A SON OR DAUGHTER OF THE PROPERTY OWNER OR A DESCENDANT OF EITHER;

(II) A STEPSON OR STEPDAUGHTER OF THE PROPERTY OWNER;

(III) A BROTHER, SISTER, STEPBROTHER, OR STEPSISTER OF THE PROPERTY OWNER;

(IV) THE FATHER OR MOTHER OF THE PROPERTY OWNER OR THE ANCESTOR OF EITHER;

(V) A STEPFATHER OR STEPMOTHER OF THE PROPERTY OWNER;

(VI) A SON OR DAUGHTER OF A BROTHER OR SISTER OF THE PROPERTY OWNER;

(VII) A BROTHER OR SISTER OF THE FATHER OR MOTHER OF THE PROPERTY OWNER;

(VIII) A SON-IN-LAW, DAUGHTER-IN-LAW, FATHER-IN-LAW, MOTHER-IN-LAW, BROTHER-IN-LAW, OR SISTER-IN-LAW OF THE PROPERTY OWNER; OR

(IX) THE SPOUSE OF THE PROPERTY OWNER;

(b) a person who leases no more than four residential real estate units;

(c) a person acting as attorney-in-fact under a power of attorney from the owner of real estate who authorizes the final consummation of any contract for the renting or leasing of the real estate. This exemption is meant to exclude a single or irregular transaction and may not be routinely used to escape the necessity of obtaining a license.

(d) an attorney at law in the performance of duties as an attorney;

(e) a receiver, trustee in bankruptcy, personal representative, person acting in regard to real estate pursuant to a court order, or a trustee under a trust

1 agreement, deed of trust, or will;

2 (f) an officer of the state or any of its political
3 subdivisions in the conduct of official duties; or

4 (g) a person acting as a manager of a housing complex
5 for low-income individuals subsidized either directly or
6 indirectly by the state, any agency or political subdivision
7 of the state, or the government or an agency of the United
8 States;

9 (H) A PERSON WHO RECEIVES COMPENSATION FROM THE OWNER
10 OF THE REAL ESTATE IN THE FORM OF REDUCED RENT OR SALARY,
11 UNLESS THAT PERSON HOLDS SIGNATORY AUTHORITY ON THE ACCOUNT
12 IN WHICH REVENUE FROM THE REAL ESTATE IS DEPOSITED OR
13 DISBURSED; OR

14 (I) A PERSON EMPLOYED BY THE OWNER OF THE REAL ESTATE
15 IF THAT PERSON'S PROPERTY MANAGEMENT DUTIES ARE INCIDENTAL
16 TO THE PERSON'S OTHER EMPLOYMENT-RELATED DUTIES.

17 (2) A licensed real estate broker on active status or a
18 licensed real estate salesman on active status and acting
19 under the supervision of a real estate broker may NOT act as
20 a property manager without meeting any THE qualifications TO
21 BE A PROPERTY MANAGER in addition to those required for
22 licensure as a real estate broker or real estate salesman.

23 NEW SECTION. Section 4. Qualification of property
24 manager applicants -- examination -- form of licenses. (1)
25 The board by rule shall require an applicant for licensure

1 to provide information that the board believes is necessary
2 to ensure that a person granted a property manager license
3 is of good repute and competent to transact the business of
4 a property manager in a manner that safeguards the welfare
5 and safety of the public.

6 (2) (a) The board shall require an applicant for a
7 property manager license to:

8 (i) apply for licensure to the department;

9 (ii) furnish written evidence that the applicant has
10 completed the number of classroom hours that the board
11 determines appropriate in a course of study approved by the
12 board and taught by instructors approved by the board; and

13 (iii) satisfactorily complete an examination dealing
14 with the material taught in the course of study.

15 (b) The course of study must include the subjects of
16 real estate leasing principles, real estate leasing law, and
17 related topics.

18 (3) Examinations must be given at least once every 4
19 months at places within the state that the board prescribes.
20 The board shall establish by rule the contents of and
21 requirements to pass the examination.

22 (4) An applicant for licensure as a property manager
23 must be at least 18 years of age and must have graduated
24 from an accredited high school or completed an equivalent
25 education as determined by the board.

(5) The board shall prescribe the form of the license, and the license must bear the seal of the board. A property manager shall display the license conspicuously in the property manager's place of business.

(6) The department shall prepare and deliver annually to the licensee a pocket card in a form prescribed by the board.

NEW SECTION. Section 5. Annual renewal -- continuing education -- fees. (1) Annual fees for renewal of the property manager license are due and payable during the month of October. Failure to remit the annual fee before November 15 automatically cancels the license. The board shall establish by rule penalty fees for late renewals.

(2) The board shall prescribe by rule requirements for continuing education that applicants shall satisfy before they are allowed to renew their licenses.

(3) The fees prescribed by the board must be charged by the department and paid into the state special revenue fund for the use of the board, subject to 37-1-101(6).

NEW SECTION. Section 6. Property manager's office -- notice of change of address. A property manager shall maintain a fixed office in this state at which the original license of the property manager must be prominently displayed. The office manager must be designated on the license. If the property manager changes the location of the

office, the property manager shall notify the department of the new address within 10 days after the change of address.

NEW SECTION. Section 7. Revocation, suspension, or denial of license -- initiation of proceedings -- grounds.

(1) The board may on its own motion and shall, on the sworn written complaint of a person, investigate the actions of a property manager licensee, subject to 37-1-101 and 37-1-121.

The board may revoke or suspend a license, place the licensee on probation, issue a letter of censure or reprimand to the licensee, or levy a fine in an amount not to exceed \$5,000, proceeds of which must be placed in the state general fund, if the licensee:

(a) is guilty of fraud or deceit in procuring or attempting to procure a license;

(b) is unfit or incompetent by reason of negligence, habit, or other causes;

(c) has demonstrated unworthiness, incompetency, or lack of honesty;

(d) is guilty of unprofessional conduct as defined by regulations prescribed by the board; or

(e) has willfully or repeatedly superseded the authority of the license by selling or attempting to sell real property or otherwise has willfully or repeatedly violated [sections 2 through 9].

(2) The board may deny an application for licensure if

the applicant:

(a) made untrue or fraudulent statements in support of the application;

(b) failed to meet the requirements stated in [section 4] for licensing; or

(c) violated any of the grounds set forth in this section, that would be grounds for suspension or revocation of a license if a license had already been issued.

NEW SECTION. Section 8. Transactions with nonlicensed persons unlawful -- action for compensation limited to licensees. (1) It is unlawful for a licensed property manager to employ or compensate, directly or indirectly, a person who is not a licensed property manager for performing the acts regulated by [sections 2 through 9].

(2) An action may not be brought or maintained in the courts for the collection of compensation for the lease of real estate unless the plaintiff first alleges that the plaintiff was licensed or was authorized to act without a license at the time the alleged cause of action or claim arose.

NEW SECTION. Section 9. Penalties -- criminal -- civil. (1) A person who acts without a license or while a license is suspended or revoked or who violates any provision of [sections 2 through 9] is guilty of a misdemeanor. For a first conviction, the person shall be

punished by a fine of not less than \$100 or more than \$500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent offense, the person shall be punished by a fine of not less than \$500 or more than \$2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) If a person is determined in a civil action to have received any money or the equivalent as a fee, commission, or other compensation while violating the provisions of [sections 2 through 9], the person is also liable for a penalty of not less than the amount received and not more than three times the amount received, as the court may determine.

NEW SECTION. Section 10. Codification instruction. [Sections 2 through 9] are intended to be codified as an integral part of Title 37, chapter 51, and the provisions of Title 37, chapter 51, apply to [sections 2 through 9].

NEW SECTION. Section 11. Effective date. [This act] is effective July 1, 1993.

-End-

1 SENATE BILL NO. 111

2 INTRODUCED BY HARP

3 BY REQUEST OF THE BOARD OF REALTY REGULATION

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A PROPERTY
6 MANAGER'S LICENSE; DEFINING "PROPERTY MANAGER" AND THE
7 PRACTICE OF PROPERTY MANAGEMENT; PROVIDING QUALIFICATIONS
8 FOR A LICENSE; PROVIDING PENALTIES; CREATING EXEMPTIONS FROM
9 REAL ESTATE AND PROPERTY MANAGEMENT LICENSING; AMENDING
10 SECTION 37-51-102, MCA; AND PROVIDING AN EFFECTIVE DATE."

11
12 STATEMENT OF INTENT

13 A statement of intent is required for this bill because
14 it delegates rulemaking authority to the board of realty
15 regulation to provide for the licensure and regulation of
16 real estate property managers. The legislature intends that
17 the board have general authority to adopt rules in regard to
18 licensing procedures, including but not limited to issuance
19 of licenses, administration of examinations, establishment
20 of criteria for grading of examinations, promulgation of
21 disciplinary standards for licensees, establishment of fee
22 schedules consistent with the program area costs, and
23 provisions for investigation of complaints against
24 licensees.



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

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

3 "37-51-102. Definitions. Unless the context requires
4 otherwise, in this chapter the following definitions apply:

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

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

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

10 (a) for another or for valuable consideration or who
11 with the intent or expectation of receiving valuable
12 consideration negotiates or attempts to negotiate the
13 listing, sale, purchase, rental, exchange, or lease of real
14 estate or of the improvements on real estate or collects
15 rents or attempts to collect rents;

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

19 (c) engages in the business of charging an advance fee
20 or contracting for collection of a fee in connection with a
21 contract by which he the individual undertakes primarily to
22 promote the sale, lease, or other disposition of real estate
23 in this state through its listing in a publication issued
24 primarily for this purpose or for referral of information
25 concerning real estate to brokers;

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

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

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

(g) ~~advertises or holds-himself-out-as~~ represents to the public that the individual 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) "Property manager" includes a person who for a salary, commission, or compensation of any kind engages in the BUSINESS OF leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to [sections 2 and 3].

~~(9)~~(10) "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)~~(11) "Salesman" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or

1 occasionally, with a real estate broker to sell, purchase,
2 or negotiate for the sale, purchase, exchange, or renting of
3 real estate."

4 NEW SECTION. Section 2. License required to manage
5 property. It is unlawful for a person to engage in or
6 conduct business, directly or indirectly, or to advertise as
7 a property manager within this state without having met the
8 qualifications for licensure as a property manager and
9 having been granted a license by the board.

10 NEW SECTION. Section 3. Definition of property
11 management -- exemptions from application. (1) An act
12 performed for compensation of any kind in the leasing,
13 renting, subleasing, or other transfer of possession of real
14 estate owned by another without transfer of the title to the
15 real estate, except as specified in this section,
16 constitutes the practice of property management. The
17 provisions of this chapter do not apply to:

18 (a) a dependent RELATIVE of the owner of the real
19 estate, ~~as defined in 26-U.S.C.-152, on the effective date~~
20 ~~of this act~~, DEFINED AS FOLLOWS:

21 (I) A SON OR DAUGHTER OF THE PROPERTY OWNER OR A
22 DESCENDANT OF EITHER;

23 (II) A STEPSON OR STEPDAUGHTER OF THE PROPERTY OWNER;

24 (III) A BROTHER, SISTER, STEPBROTHER, OR STEPSISTER OF
25 THE PROPERTY OWNER;

1 (IV) THE FATHER OR MOTHER OF THE PROPERTY OWNER OR THE
2 ANCESTOR OF EITHER;

3 (V) A STEPFATHER OR STEPMOTHER OF THE PROPERTY OWNER;

4 (VI) A SON OR DAUGHTER OF A BROTHER OR SISTER OF THE
5 PROPERTY OWNER;

6 (VII) A BROTHER OR SISTER OF THE FATHER OR MOTHER OF THE
7 PROPERTY OWNER;

8 (VIII) A SON-IN-LAW, DAUGHTER-IN-LAW, FATHER-IN-LAW,
9 MOTHER-IN-LAW, BROTHER-IN-LAW, OR SISTER-IN-LAW OF THE
10 PROPERTY OWNER; OR

11 (IX) THE SPOUSE OF THE PROPERTY OWNER;

12 (b) a person who leases no more than four residential
13 real estate units;

14 (c) a person acting as attorney-in-fact under a power
15 of attorney from the owner of real estate who authorizes the
16 final consummation of any contract for the renting or
17 leasing of the real estate. This exemption is meant to
18 exclude a single or irregular transaction and may not be
19 routinely used to escape the necessity of obtaining a
20 license.

21 (d) an attorney at law in the performance of duties as
22 an attorney;

23 (e) a receiver, trustee in bankruptcy, personal
24 representative, person acting in regard to real estate
25 pursuant to a court order, or a trustee under a trust

1 agreement, deed of trust, or will;

2 (f) an officer of the state or any of its political
3 subdivisions in the conduct of official duties; or

4 (g) a person acting as a manager of a housing complex
5 for low-income individuals subsidized either directly or
6 indirectly by the state, any agency or political subdivision
7 of the state, or the government or an agency of the United
8 States-;

9 (H) A PERSON WHO RECEIVES COMPENSATION FROM THE OWNER
10 OF THE REAL ESTATE IN THE FORM OF REDUCED RENT OR SALARY,
11 UNLESS THAT PERSON HOLDS SIGNATORY AUTHORITY ON THE ACCOUNT
12 IN WHICH REVENUE FROM THE REAL ESTATE IS DEPOSITED OR
13 DISBURSED; OR

14 (I) A PERSON EMPLOYED BY THE OWNER OF THE REAL ESTATE
15 IF THAT PERSON'S PROPERTY MANAGEMENT DUTIES ARE INCIDENTAL
16 TO THE PERSON'S OTHER EMPLOYMENT-RELATED DUTIES.

17 (2) A licensed real estate broker on active status or a
18 licensed real estate salesman on active status and acting
19 under the supervision of a real estate broker may NOT act as
20 a property manager without meeting any THE ANY
21 qualifications TO-BE-A-PROPERTY-MANAGER in addition to those
22 required for licensure as a real estate broker or real
23 estate salesman.

24 NEW SECTION. Section 4. Qualification of property
25 manager applicants -- examination -- form of licenses. (1)

1 The board by rule shall require an applicant for licensure
2 to provide information that the board believes is necessary
3 to ensure that a person granted a property manager license
4 is of good repute and competent to transact the business of
5 a property manager in a manner that safeguards the welfare
6 and safety of the public.

7 (2) (a) The board shall require an applicant for a
8 property manager license to:

9 (i) apply for licensure to the department;

10 (ii) furnish written evidence that the applicant has
11 completed the number of classroom hours that the board
12 determines appropriate in a course of study approved by the
13 board and taught by instructors approved by the board; and

14 (iii) satisfactorily complete an examination dealing
15 with the material taught in the course of study.

16 (b) The course of study must include the subjects of
17 real estate leasing principles, real estate leasing law, and
18 related topics.

19 (3) Examinations must be given at least once every 4
20 months at places within the state that the board prescribes.
21 The board shall establish by rule the contents of and
22 requirements to pass the examination.

23 (4) An applicant for licensure as a property manager
24 must be at least 18 years of age and must have graduated
25 from an accredited high school or completed an equivalent

education as determined by the board.

(5) The board shall prescribe the form of the license, and the license must bear the seal of the board. A property manager shall display the license conspicuously in the property manager's place of business.

(6) The department shall prepare and deliver annually to the licensee a pocket card in a form prescribed by the board.

NEW SECTION. Section 5. Annual renewal -- continuing education -- fees. (1) Annual fees for renewal of the property manager license are due and payable during the month of October. Failure to remit the annual fee before November 15 automatically cancels the license. The board shall establish by rule penalty fees for late renewals.

(2) The board shall prescribe by rule requirements for continuing education that applicants shall satisfy before they are allowed to renew their licenses.

(3) The fees prescribed by the board must be charged by the department and paid into the state special revenue fund for the use of the board, subject to 37-1-101(6).

NEW SECTION. Section 6. Property manager's office -- notice of change of address. A property manager shall maintain a fixed office in this state at which the original license of the property manager must be prominently displayed. The office manager must be designated on the

license. If the property manager changes the location of the office, the property manager shall notify the department of the new address within 10 days after the change of address.

NEW SECTION. Section 7. Revocation, suspension, or denial of license -- initiation of proceedings -- grounds. (1) The board may on its own motion and shall, on the sworn written complaint of a person, investigate the actions of a property manager licensee, subject to 37-1-101 and 37-1-121. The board may revoke or suspend a license, place the licensee on probation, issue a letter of censure or reprimand to the licensee, or levy a fine in an amount not to exceed \$5,000, proceeds of which must be placed in the state general fund, if the licensee:

(a) is guilty of fraud or deceit in procuring or attempting to procure a license;

(b) is unfit or incompetent by reason of negligence, habit, or other causes;

(c) has demonstrated unworthiness, incompetency, or lack of honesty;

(d) is guilty of unprofessional conduct as defined by regulations prescribed by the board; or

(e) has willfully or repeatedly superseded the authority of the license by selling or attempting to sell real property or otherwise has willfully or repeatedly violated [sections 2 through 9].

(2) The board may deny an application for licensure if the applicant:

(a) made untrue or fraudulent statements in support of the application;

(b) failed to meet the requirements stated in [section 4] for licensing; or

(c) violated any of the grounds set forth in this section, that would be grounds for suspension or revocation of a license if a license had already been issued.

NEW SECTION. Section 8. Transactions with nonlicensed persons unlawful -- action for compensation limited to licensees. (1) It is unlawful for a licensed property manager to employ or compensate, directly or indirectly, a person who is not a licensed property manager for performing the acts regulated by [sections 2 through 9].

(2) An action may not be brought or maintained in the courts for the collection of compensation for the lease of real estate unless the plaintiff first alleges that the plaintiff was licensed or was authorized to act without a license at the time the alleged cause of action or claim arose.

NEW SECTION. Section 9. Penalties -- criminal -- civil. (1) A person who acts without a license or while a license is suspended or revoked or who violates any provision of [sections 2 through 9] is guilty of a

misdeemeanor. For a first conviction, the person shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent offense, the person shall be punished by a fine of not less than \$500 or more than \$2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) If a person is determined in a civil action to have received any money or the equivalent as a fee, commission, or other compensation while violating the provisions of [sections 2 through 9], the person is also liable for a penalty of not less than the amount received and not more than three times the amount received, as the court may determine.

NEW SECTION. Section 10. Codification instruction. [Sections 2 through 9] are intended to be codified as an integral part of Title 37, chapter 51, and the provisions of Title 37, chapter 51, apply to [sections 2 through 9].

NEW SECTION. Section 11. Effective date. [This act] is effective July 1, 1993.

-End-

1 SENATE BILL NO. 111

2 INTRODUCED BY HARP

3 BY REQUEST OF THE BOARD OF REALTY REGULATION

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A PROPERTY
6 MANAGER'S LICENSE; DEFINING "PROPERTY MANAGER" AND THE
7 PRACTICE OF PROPERTY MANAGEMENT; PROVIDING QUALIFICATIONS
8 FOR A LICENSE; PROVIDING PENALTIES; CREATING EXEMPTIONS FROM
9 REAL ESTATE AND PROPERTY MANAGEMENT LICENSING; AMENDING
10 SECTION 37-51-102, MCA; AND PROVIDING AN EFFECTIVE DATE."
11

12 STATEMENT OF INTENT

13 A statement of intent is required for this bill because
14 it delegates rulemaking authority to the board of realty
15 regulation to provide for the licensure and regulation of
16 real estate property managers. The legislature intends that
17 the board have general authority to adopt rules in regard to
18 licensing procedures, including but not limited to issuance
19 of licenses, administration of examinations, establishment
20 of criteria for grading of examinations, promulgation of
21 disciplinary standards for licensees, establishment of fee
22 schedules consistent with the program area costs, and
23 provisions for investigation of complaints against
24 licensees.
25

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

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

3 "37-51-102. Definitions. Unless the context requires
4 otherwise, in this chapter the following definitions apply:

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

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

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

10 (a) for another or for valuable consideration or who
11 with the intent or expectation of receiving valuable
12 consideration negotiates or attempts to negotiate the
13 listing, sale, purchase, rental, exchange, or lease of real
14 estate or of the improvements on real estate or collects
15 rents or attempts to collect rents;

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

19 (c) engages in the business of charging an advance fee
20 or contracting for collection of a fee in connection with a
21 contract by which he the individual undertakes primarily to
22 promote the sale, lease, or other disposition of real estate
23 in this state through its listing in a publication issued
24 primarily for this purpose or for referral of information
25 concerning real estate to brokers;

1 (d) makes the advertising, sale, lease, or other real
2 estate information available by public display to potential
3 buyers and who aids, attempts, or offers to aid, for a fee,
4 any person in locating or obtaining any real estate for
5 purchase or lease;

6 (e) aids or attempts or offers to aid, for a fee, any
7 person in locating or obtaining any real estate for purchase
8 or lease;

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

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

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

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

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

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

24 (a) a franchisee is granted the right to engage in
25 business under a marketing plan prescribed in substantial

1 part by the franchisor;

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

6 (c) the franchisee is required to pay, directly or
7 indirectly, a fee for the right to operate under the
8 agreement.

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

13 (9) "Property manager" includes a person who for a
14 salary, commission, or compensation of any kind engages in
15 the BUSINESS OF leasing, renting, subleasing, or other
16 transfer of possession of real estate belonging to others
17 without transfer of the title to the property, pursuant to
18 [sections 2 and 3].

19 ~~(9)(10)~~ "Real estate" includes leaseholds as well as any
20 other interest or estate in land, whether corporeal,
21 incorporeal, freehold, or nonfreehold and whether the real
22 estate is situated in this state or elsewhere.

23 ~~(10)(11)~~ "Salesman" includes an individual who for a
24 salary, commission, or compensation of any kind is
25 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."

NEW SECTION. Section 2. License required to manage property. It is unlawful for a person to engage in or conduct business, directly or indirectly, or to advertise as a property manager within this state without having met the qualifications for licensure as a property manager and having been granted a license by the board.

NEW SECTION. Section 3. Definition of property management -- exemptions from application. (1) An act performed for compensation of any kind in the leasing, renting, subleasing, or other transfer of possession of real estate owned by another without transfer of the title to the real estate, except as specified in this section, constitutes the practice of property management. The provisions of this chapter do not apply to:

(a) a dependent RELATIVE of the owner of the real estate ~~as defined in 26-U.S.C.-152, on the effective date of this act~~; DEFINED AS FOLLOWS:

(I) A SON OR DAUGHTER OF THE PROPERTY OWNER OR A DESCENDANT OF EITHER;

(II) A STEPSON OR STEPDAUGHTER OF THE PROPERTY OWNER;

(III) A BROTHER, SISTER, STEPBROTHER, OR STEPSISTER OF THE PROPERTY OWNER;

(IV) THE FATHER OR MOTHER OF THE PROPERTY OWNER OR THE ANCESTOR OF EITHER;

(V) A STEPFATHER OR STEPMOTHER OF THE PROPERTY OWNER;

(VI) A SON OR DAUGHTER OF A BROTHER OR SISTER OF THE PROPERTY OWNER;

(VII) A BROTHER OR SISTER OF THE FATHER OR MOTHER OF THE PROPERTY OWNER;

(VIII) A SON-IN-LAW, DAUGHTER-IN-LAW, FATHER-IN-LAW, MOTHER-IN-LAW, BROTHER-IN-LAW, OR SISTER-IN-LAW OF THE PROPERTY OWNER; OR

(IX) THE SPOUSE OF THE PROPERTY OWNER;

(b) a person who leases no more than four residential real estate units;

(c) a person acting as attorney-in-fact under a power of attorney from the owner of real estate who authorizes the final consummation of any contract for the renting or leasing of the real estate. This exemption is meant to exclude a single or irregular transaction and may not be routinely used to escape the necessity of obtaining a license.

(d) an attorney at law in the performance of duties as an attorney;

(e) a receiver, trustee in bankruptcy, personal representative, person acting in regard to real estate pursuant to a court order, or a trustee under a trust

1 agreement, deed of trust, or will;

2 (f) an officer of the state or any of its political
3 subdivisions in the conduct of official duties; or

4 (g) a person acting as a manager of a housing complex
5 for low-income individuals subsidized either directly or
6 indirectly by the state, any agency or political subdivision
7 of the state, or the government or an agency of the United
8 States;

9 (H) A PERSON WHO RECEIVES COMPENSATION FROM THE OWNER
10 OF THE REAL ESTATE IN THE FORM OF REDUCED RENT OR SALARY,
11 UNLESS THAT PERSON HOLDS SIGNATORY AUTHORITY ON THE ACCOUNT
12 IN WHICH REVENUE FROM THE REAL ESTATE IS DEPOSITED OR
13 DISBURSED; OR

14 (I) A PERSON EMPLOYED BY THE OWNER OF THE REAL ESTATE
15 IF THAT PERSON'S PROPERTY MANAGEMENT DUTIES ARE INCIDENTAL
16 TO THE PERSON'S OTHER EMPLOYMENT-RELATED DUTIES; OR

17 (J) A PERSON EMPLOYED ON A SALARIED BASIS BY ONLY ONE
18 PERSON.

19 (2) A licensed real estate broker on active status or a
20 licensed real estate salesman on active status and acting
21 under the supervision of a real estate broker may NOT act as
22 a property manager without meeting any THE ANY
23 qualifications TO-BE-A-PROPERTY-MANAGER in addition to those
24 required for licensure as a real estate broker or real
25 estate salesman.

1 NEW SECTION. Section 4. Qualification of property

2 manager applicants -- examination -- form of licenses. (1)

3 The board by rule shall require an applicant for licensure
4 to provide information that the board believes is necessary
5 to ensure that a person granted a property manager license
6 is of good repute and competent to transact the business of
7 a property manager in a manner that safeguards the welfare
8 and safety of the public.

9 (2) (a) The board shall require an applicant for a
10 property manager license to:

11 (i) apply for licensure to the department;

12 (ii) furnish written evidence that the applicant has
13 completed the number of classroom hours that the board
14 determines appropriate in a course of study approved by the
15 board and taught by instructors approved by the board; and

16 (iii) satisfactorily complete an examination dealing
17 with the material taught in the course of study.

18 (b) The course of study must include the subjects of
19 real estate leasing principles, real estate leasing law, and
20 related topics.

21 (3) Examinations must be given at least once every 4
22 months at places within the state that the board prescribes.
23 The board shall establish by rule the contents of and
24 requirements to pass the examination.

25 (4) An applicant for licensure as a property manager

1 must be at least 18 years of age and must have graduated
2 from an accredited high school or completed an equivalent
3 education as determined by the board.

4 (5) The board shall prescribe the form of the license,
5 and the license must bear the seal of the board. A property
6 manager shall display the license conspicuously in the
7 property manager's place of business.

8 (6) The department shall prepare and deliver annually
9 to the licensee a pocket card in a form prescribed by the
10 board.

11 NEW SECTION. Section 5. Annual renewal -- continuing
12 education -- fees. (1) Annual fees for renewal of the
13 property manager license are due and payable during the
14 month of October. Failure to remit the annual fee before
15 November 15 automatically cancels the license. The board
16 shall establish by rule penalty fees for late renewals.

17 (2) The board shall prescribe by rule requirements for
18 continuing education that applicants shall satisfy before
19 they are allowed to renew their licenses.

20 (3) The fees prescribed by the board must be charged by
21 the department and paid into the state special revenue fund
22 for the use of the board, subject to 37-1-101(6).

23 NEW SECTION. Section 6. Property manager's office --
24 notice of change of address. A property manager shall
25 maintain a fixed office in this state at which the original

1 license of the property manager must be prominently
2 displayed. The office manager must be designated on the
3 license. If the property manager changes the location of the
4 office, the property manager shall notify the department of
5 the new address within 10 days after the change of address.

6 NEW SECTION. Section 7. Revocation, suspension, or
7 denial of license -- initiation of proceedings -- grounds.

8 (1) The board may on its own motion and shall, on the sworn
9 written complaint of a person, investigate the actions of a
10 property manager licensee, subject to 37-1-101 and 37-1-121.
11 The board may revoke or suspend a license, place the
12 licensee on probation, issue a letter of censure or
13 reprimand to the licensee, or levy a fine in an amount not
14 to exceed \$5,000, proceeds of which must be placed in the
15 state general fund, if the licensee:

16 (a) is guilty of fraud or deceit in procuring or
17 attempting to procure a license;

18 (b) is unfit or incompetent by reason of negligence,
19 habit, or other causes;

20 (c) has demonstrated unworthiness, incompetency, or
21 lack of honesty;

22 (d) is guilty of unprofessional conduct as defined by
23 regulations prescribed by the board; or

24 (e) has willfully or repeatedly superseded the
25 authority of the license by selling or attempting to sell

1 real property or otherwise has willfully or repeatedly
2 violated [sections 2 through 9].

3 (2) The board may deny an application for licensure if
4 the applicant:

5 (a) made untrue or fraudulent statements in support of
6 the application;

7 (b) failed to meet the requirements stated in [section
8 4] for licensing; or

9 (c) violated any of the grounds set forth in this
10 section, that would be grounds for suspension or revocation
11 of a license if a license had already been issued.

12 NEW SECTION. Section 8. Transactions with nonlicensed
13 persons unlawful -- action for compensation limited to
14 licensees. (1) It is unlawful for a licensed property
15 manager to employ or compensate, directly or indirectly, a
16 person who is not a licensed property manager for performing
17 the acts regulated by [sections 2 through 9].

18 (2) An action may not be brought or maintained in the
19 courts for the collection of compensation for the lease of
20 real estate unless the plaintiff first alleges that the
21 plaintiff was licensed or was authorized to act without a
22 license at the time the alleged cause of action or claim
23 arose.

24 NEW SECTION. Section 9. Penalties -- criminal --
25 civil. (1) A person who acts without a license or while a

1 license is suspended or revoked or who violates any
2 provision of [sections 2 through 9] is guilty of a
3 misdemeanor. For a first conviction, the person shall be
4 punished by a fine of not less than \$100 or more than \$500
5 or by imprisonment for a term not to exceed 90 days, or
6 both. Upon conviction of a second or subsequent offense, the
7 person shall be punished by a fine of not less than \$500 or
8 more than \$2,000 or by imprisonment for a term not to exceed
9 6 months, or both.

10 (2) If a person is determined in a civil action to have
11 received any money or the equivalent as a fee, commission,
12 or other compensation while violating the provisions of
13 [sections 2 through 9], the person is also liable for a
14 penalty of not less than the amount received and not more
15 than three times the amount received, as the court may
16 determine.

17 NEW SECTION. Section 10. Codification instruction.
18 [Sections 2 through 9] are intended to be codified as an
19 integral part of Title 37, chapter 51, and the provisions of
20 Title 37, chapter 51, apply to [sections 2 through 9].

21 NEW SECTION. Section 11. Effective date. [This act] is
22 effective July 1, 1993.

-End-