

SENATE BILL NO. 473

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

2278S.011

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal section 339.100, RSMo, and to enact in lieu thereof one new section relating to advertisements for real estate companies, with existing penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 339.100, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 339.100,
3 to read as follows:

339.100. 1. The commission may, upon its own motion,
2 and shall upon receipt of a written complaint filed by any
3 person, investigate any real estate-related activity of a
4 licensee licensed under sections 339.010 to 339.180 and
5 sections 339.710 to 339.860 or an individual or entity
6 acting as or representing themselves as a real estate
7 licensee. In conducting such investigation, if the
8 questioned activity or written complaint involves an
9 affiliated licensee, the commission may forward a copy of
10 the information received to the affiliated licensee's
11 designated broker. The commission shall have the power to
12 hold an investigatory hearing to determine whether there is
13 a probability of a violation of sections 339.010 to 339.180
14 and sections 339.710 to 339.860. The commission shall have
15 the power to issue a subpoena to compel the production of
16 records and papers bearing on the complaint. The commission
17 shall have the power to issue a subpoena and to compel any
18 person in this state to come before the commission to offer
19 testimony or any material specified in the subpoena.
20 Subpoenas and subpoenas duces tecum issued pursuant to this

21 section shall be served in the same manner as subpoenas in a
22 criminal case. The fees and mileage of witnesses shall be
23 the same as that allowed in the circuit court in civil cases.

24 2. The commission may cause a complaint to be filed
25 with the administrative hearing commission as provided by
26 the provisions of chapter 621 against any person or entity
27 licensed under this chapter or any licensee who has failed
28 to renew or has surrendered his or her individual or entity
29 license for any one or any combination of the following acts:

30 (1) Failure to maintain and deposit in a special
31 account, separate and apart from his or her personal or
32 other business accounts, all moneys belonging to others
33 entrusted to him or her while acting as a real estate broker
34 or as the temporary custodian of the funds of others, until
35 the transaction involved is consummated or terminated,
36 unless all parties having an interest in the funds have
37 agreed otherwise in writing;

38 (2) Making substantial misrepresentations or false
39 promises or suppression, concealment or omission of material
40 facts in the conduct of his or her business or pursuing a
41 flagrant and continued course of misrepresentation through
42 agents, salespersons, advertising or otherwise in any
43 transaction;

44 (3) Failing within a reasonable time to account for or
45 to remit any moneys, valuable documents or other property,
46 coming into his or her possession, which belongs to others;

47 (4) Representing to any lender, guaranteeing agency,
48 or any other interested party, either verbally or through
49 the preparation of false documents, an amount in excess of
50 the true and actual sale price of the real estate or terms
51 differing from those actually agreed upon;

52 (5) Failure to timely deliver a duplicate original of
53 any and all instruments to any party or parties executing
54 the same where the instruments have been prepared by the
55 licensee or under his or her supervision or are within his
56 or her control, including, but not limited to, the
57 instruments relating to the employment of the licensee or to
58 any matter pertaining to the consummation of a lease,
59 listing agreement or the purchase, sale, exchange or lease
60 of property, or any type of real estate transaction in which
61 he or she may participate as a licensee;

62 (6) Acting for more than one party in a transaction
63 without the knowledge of all parties for whom he or she
64 acts, or accepting a commission or valuable consideration
65 for services from more than one party in a real estate
66 transaction without the knowledge of all parties to the
67 transaction;

68 (7) Paying a commission or valuable consideration to
69 any person for acts or services performed in violation of
70 sections 339.010 to 339.180 and sections 339.710 to 339.860;

71 (8) Guaranteeing or having authorized or permitted any
72 licensee to guarantee future profits which may result from
73 the resale of real property;

74 (9) Having been finally adjudicated and been found
75 guilty of the violation of any state or federal statute
76 which governs the sale or rental of real property or the
77 conduct of the real estate business as defined in subsection
78 1 of section 339.010;

79 (10) Obtaining a certificate or registration of
80 authority, permit or license for himself or herself or
81 anyone else by false or fraudulent representation, fraud or
82 deceit;

83 (11) Representing a real estate broker other than the
84 broker with whom associated without the express written
85 consent of the broker with whom associated;

86 (12) Accepting a commission or valuable consideration
87 for the performance of any of the acts referred to in
88 section 339.010 from any person except the broker with whom
89 associated at the time the commission or valuable
90 consideration was earned;

91 (13) Using prizes, money, gifts or other valuable
92 consideration as inducement to secure customers or clients
93 to purchase, lease, sell or list property when the awarding
94 of such prizes, money, gifts or other valuable consideration
95 is conditioned upon the purchase, lease, sale or listing; or
96 soliciting, selling or offering for sale real property by
97 offering free lots, or conducting lotteries or contests, or
98 offering prizes for the purpose of influencing a purchaser
99 or prospective purchaser of real property;

100 (14) Placing a sign on or advertising any property
101 offering it for sale or rent without the written consent of
102 the owner or his or her duly authorized agent;

103 (15) Violation of, or attempting to violate, directly
104 or indirectly, or assisting or enabling any person to
105 violate, any provision of sections 339.010 to 339.180 and
106 sections 339.710 to 339.860, or of any lawful rule adopted
107 pursuant to sections 339.010 to 339.180 and sections 339.710
108 to 339.860;

109 (16) Committing any act which would otherwise be
110 grounds for the commission to refuse to issue a license
111 under section 339.040;

112 (17) Failure to timely inform seller of all written
113 offers unless otherwise instructed in writing by the seller;

114 (18) Been finally adjudicated and found guilty, or
115 entered a plea of guilty or nolo contendere, in a criminal
116 prosecution under the laws of this state or any other state
117 or of the United States, for any offense reasonably related
118 to the qualifications, functions or duties of any profession
119 licensed or regulated under this chapter, or for any offense
120 an essential element of which is fraud, dishonesty or an act
121 of violence, whether or not sentence is imposed;

122 (19) Any other conduct which constitutes
123 untrustworthy, improper or fraudulent business dealings,
124 demonstrates bad faith or incompetence, misconduct, or gross
125 negligence;

126 (20) Disciplinary action against the holder of a
127 license or other right to practice any profession regulated
128 under sections 339.010 to 339.180 and sections 339.710 to
129 339.860 granted by another state, territory, federal agency,
130 or country upon grounds for which revocation, suspension, or
131 probation is authorized in this state;

132 (21) Been found by a court of competent jurisdiction
133 of having used any controlled substance, as defined in
134 chapter 195, to the extent that such use impairs a person's
135 ability to perform the work of any profession licensed or
136 regulated by sections 339.010 to 339.180 and sections
137 339.710 to 339.860;

138 (22) Been finally adjudged insane or incompetent by a
139 court of competent jurisdiction;

140 (23) Assisting or enabling any person to practice or
141 offer to practice any profession licensed or regulated under
142 sections 339.010 to 339.180 and sections 339.710 to 339.860
143 who is not registered and currently eligible to practice
144 under sections 339.010 to 339.180 and sections 339.710 to
145 339.860;

146 (24) Use of any advertisement or solicitation which:
147 (a) Is knowingly false, misleading or deceptive to the
148 general public or persons to whom the advertisement or
149 solicitation is primarily directed; or

150 (b) **Includes a name or team name that uses the terms**
151 **"realty", "brokerage", "company", or any other terms that**
152 **can be construed to advertise a real estate company other**
153 **than the licensee or a business entity licensed under this**
154 **chapter with whom the licensee is associated. The context**
155 **of the advertisement or solicitation may be considered by**
156 **the commission when determining whether a licensee has**
157 **committed a violation of this paragraph;**

158 (25) Making any material misstatement,
159 misrepresentation, or omission with regard to any
160 application for licensure or license renewal. As used in
161 this section, "material" means important information about
162 which the commission should be informed and which may
163 influence a licensing decision;

164 (26) Engaging in, committing, or assisting any person
165 in engaging in or committing mortgage fraud, as defined in
166 section 443.930.

167 3. After the filing of such complaint, the proceedings
168 will be conducted in accordance with the provisions of law
169 relating to the administrative hearing commission. A
170 finding of the administrative hearing commissioner that the
171 licensee has performed or attempted to perform one or more
172 of the foregoing acts shall be grounds for the suspension or
173 revocation of his license by the commission, or the placing
174 of the licensee on probation on such terms and conditions as
175 the real estate commission shall deem appropriate, or the
176 imposition of a civil penalty by the commission not to
177 exceed two thousand five hundred dollars for each offense.

178 Each day of a continued violation shall constitute a
179 separate offense.

180 4. The commission may prepare a digest of the
181 decisions of the administrative hearing commission which
182 concern complaints against licensed brokers or salespersons
183 and cause such digests to be mailed to all licensees
184 periodically. Such digests may also contain reports as to
185 new or changed rules adopted by the commission and other
186 information of significance to licensees.

187 5. Notwithstanding other provisions of this section, a
188 broker or salesperson's license shall be revoked, or in the
189 case of an applicant, shall not be issued, if the licensee
190 or applicant has pleaded guilty to, entered a plea of nolo
191 contendere to, or been found guilty of any of the following
192 offenses or offenses of a similar nature established under
193 the laws of this, any other state, the United States, or any
194 other country, notwithstanding whether sentence is imposed:

195 (1) Any dangerous felony as defined under section
196 556.061 or murder in the first degree;

197 (2) Any of the following sexual offenses: rape in the
198 first degree, forcible rape, rape, statutory rape in the
199 first degree, statutory rape in the second degree, rape in
200 the second degree, sexual assault, sodomy in the first
201 degree, forcible sodomy, statutory sodomy in the first
202 degree, statutory sodomy in the second degree, child
203 molestation in the first degree, child molestation in the
204 second degree, sodomy in the second degree, deviate sexual
205 assault, sexual misconduct involving a child, sexual
206 misconduct in the first degree under section 566.090 as it
207 existed prior to August 28, 2013, sexual abuse under section
208 566.100 as it existed prior to August 28, 2013, sexual abuse

209 in the first or second degree, enticement of a child, or
210 attempting to entice a child;

211 (3) Any of the following offenses against the family
212 and related offenses: incest, abandonment of a child in the
213 first degree, abandonment of a child in the second degree,
214 endangering the welfare of a child in the first degree,
215 abuse of a child, using a child in a sexual performance,
216 promoting sexual performance by a child, or trafficking in
217 children;

218 (4) Any of the following offenses involving child
219 pornography and related offenses: promoting obscenity in
220 the first degree, promoting obscenity in the second degree
221 when the penalty is enhanced to a class E felony, promoting
222 child pornography in the first degree, promoting child
223 pornography in the second degree, possession of child
224 pornography in the first degree, possession of child
225 pornography in the second degree, furnishing child
226 pornography to a minor, furnishing pornographic materials to
227 minors, or coercing acceptance of obscene material; and

228 (5) Mortgage fraud as defined in section 570.310.

229 6. A person whose license was revoked under subsection
230 5 of this section may appeal such revocation to the
231 administrative hearing commission. Notice of such appeal
232 must be received by the administrative hearing commission
233 within ninety days of mailing, by certified mail, the notice
234 of revocation. Failure of a person whose license was
235 revoked to notify the administrative hearing commission of
236 his or her intent to appeal waives all rights to appeal the
237 revocation. Upon notice of such person's intent to appeal,
238 a hearing shall be held before the administrative hearing
239 commission.

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