S T A T E O F N E W Y O R K

3187--A

2009-2010 Regular Sessions

I N A S S E M B L Y

January 23, 2009

Introduced by M. of A. PHEFFER -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property law, in relation to fines and procedures in connection with misconduct by real estate brokers and salespersons

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph (a) of subdivision 1 of section 441-c of the real property law, as amended by chapter 81 of the laws of 1995, is amended to read as follows:

(a) The department of state may revoke the license of a real estate broker or salesman or suspend the same, for such period as the department may deem proper, or in lieu thereof may impose a [fine] CIVIL PENALTY not exceeding [one] TWO thousand dollars payable to the department of state, or a reprimand upon conviction of the licensee of a violation of any provision of this article, or for a material misstatement in the application for such license, or if such licensee has been guilty of fraud or fraudulent practices, or for dishonest or misleading advertising, or has demonstrated untrustworthiness or incompetency to act as a real estate broker or salesman, as the case may be. In the case of a real estate broker engaged in the business of a tenant relocator, untrustworthiness or incompetency shall include engaging in any course of conduct including, but not limited to, the interruption or discontinuance of essential building service, that interferes with or disturbs the peace, comfort, repose and quiet enjoyment of a tenant.

S 2. Subdivision 2 of section 441-e of the real property law, as amended by chapter 505 of the laws of 2001, is amended to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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2. Revocation, suspension, reprimands, fines. The department of state shall, before revoking or suspending any license or imposing any fine or reprimand on the holder thereof or before imposing any fine upon any person not licensed pursuant to this article who is deemed to be in violation of section four hundred forty-two-h of this article, and at least ten days prior to the date set for the hearing, notify in writing the holder of such license or such unlicensed person of any charges made and shall afford such licensee or unlicensed person an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of same personally to the licensee, or by mailing same by certified mail to the last known business address of such licensee or unlicensed person, or by any method authorized by the civil practice law and rules. If said licensee be a [salesman] SALESPERSON, the department shall also notify the broker with whom he OR SHE is associated of the charges by mailing notice by certified mail to the broker's last known business address. The hearing on such charges shall be at such time and place as the department shall prescribe, WHICH PLACE, IN THE CASE OF ANY HEARING RELATING TO A CHARGE ARISING OUT OF AN ALLEGED VIOLATION OF SECTION FOUR HUNDRED FORTY-TWO-H OF THIS ARTICLE, SHALL BE WITHIN THE COUNTY WHEREIN THE REAL PROPERTY IN CONNECTION WITH THE CHARGE ARISES IS LOCATED IF IT CAN BE ARRANGED AT REASONABLE COST.

S 3. Section 442-h of the real property law is amended by adding a new subdivision 4 to read as follows:

4. THE SECRETARY OF STATE SHALL PUBLISH ANNUALLY, ON OR BEFORE DECEMBER THIRTY-FIRST OF EACH YEAR, A LIST ORGANIZED BY ZIP CODE, OF ALL FINES, SUSPENSIONS, AND REVOCATIONS IMPOSED UPON LICENSEES FOR VIOLATION OF THIS SECTION.

S 4. Paragraph (c) of subdivision 3 of section 442-h of the real property law, as amended by chapter 505 of the laws of 2001, is amended to read as follows:

(c) No rule establishing a cease and desist zone shall be effective for longer than five years. However, the secretary of state may re-adopt the rule to continue the cease and desist zone for additional periods not to exceed five years each. AT LEAST NINETY DAYS PRIOR TO THE EXPIRATION OF A CEASE AND DESIST ZONE RULE, THE SECRETARY OF STATE SHALL HOLD PUBLIC HEARINGS WITHIN EACH SUCH CEASE AND DESIST ZONE PROVIDED IT CAN BE ARRANGED AT REASONABLE COST. AT LEAST SIXTY DAYS PRIOR TO THE EXPIRATION OF A CEASE AND DESIST ZONE, THE SECRETARY OF STATE SHALL REPORT TO THE LEGISLATURE WHETHER OR NOT SUCH CEASE AND DESIST ZONE IS BEING READOPTED AND THE REASON FOR SUCH DETERMINATION. Whenever a rule establishing a cease and desist zone shall have expired or shall have been repealed, all owner's statements filed with the secretary of state pursuant to that rule shall also expire. However, an owner may file a new statement with the secretary of state if a new rule is adopted establishing a cease and desist zone containing the owner's property. Once the boundaries of a cease and desist zone have been established by rule of the secretary of state, the boundaries may not be changed except by repeal of the existing rule and adoption of a new rule establishing the new boundaries.

S 5. This act shall take effect immediately; provided that sections one and two of this act shall take effect on the first of January next succeeding the date on which it shall have become a law; and provided further that the secretary of state is authorized to promulgate any and all rules and regulations and take any other measures necessary to implement this act on its effective date on or before such date.