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

7287

2009-2010 Regular Sessions

I N A S S E M B L Y

March 27, 2009

Introduced by M. of A. ROSENTHAL, GOTTFRIED, KELLNER -- Multi-Sponsored by -- M. of A. BRENNAN, MAISEL -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property law, in relation to online listing of property for sale or rent

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

Section 1. Subdivision 1 of section 440 of the real property law, as amended by chapter 324 of the laws of 1998, is amended to read as follows:

1. Whenever used in this article "real estate broker" means any person, firm, limited liability company or corporation, who, for another and for a fee, commission or other valuable consideration, lists for sale, COMPILES AND PROVIDES ONLINE LISTINGS OF REAL PROPERTY FOR RENT OR SALE, sells, at auction or otherwise, exchanges, buys or rents, or offers or attempts to negotiate a sale, at auction or otherwise, exchange, purchase or rental of an estate or interest in real estate, or collects or offers or attempts to collect rent for the use of real estate, or negotiates or offers or attempts to negotiate, a loan secured or to be secured by a mortgage, other than a residential mortgage loan, as defined in section five hundred ninety of the banking law, or other incumbrance upon or transfer of real estate, or is engaged in the business of a tenant relocator, or who, notwithstanding any other provision of law, performs any of the above stated functions with respect to the resale of condominium property originally sold pursuant to the provisions of the general business law governing real estate syndication offerings. In the sale of lots pursuant to the provisions of article nine-A of this chapter, the term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commis-

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

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sion, or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate. For purposes of this subdivision the term, "interest in real estate" shall include the sale of a business wherein the value of the real estate transferred as part of the business is not merely incidental to the transaction, and shall not include the assignment of a lease, and further, the transaction itself is not otherwise subject to regulation under state or federal laws governing the sale of securities. In connection with the sale of a business the term "real estate broker" shall not include a person, firm or corporation registered pursuant to the provisions of article twenty-three-A of the general business law or federal securities laws.

S 2. Subdivision 1 of section 442-k of the real property law, as added by chapter 248 of the laws of 1995, is amended to read as follows:

1. The state real estate board shall have the power to promulgate rules or regulations affecting brokers and sales persons in order to administer and effectuate the purposes of this article, except that matters pertaining to commingling money of a principal, rendering accounts for a client, managing property for a client, broker's purchase of property listed with him or her, inducing breach of contract of sale or lease, and records of transactions to be maintained, AND ONLINE POSTINGS OF REAL PROPERTY FOR RENT OR SALE are reserved for the exclusive regulatory authority of the secretary of state. The secretary of state, and not the state real estate board, shall promulgate rules and regulations to administer or implement the provisions of sections four hundred forty-one and four hundred forty-two-h of this article. In addition, the secretary of state shall have exclusive regulatory authority to promulgate rules regarding the duties and responsibilities of real estate brokers and salespersons with regard to the handling of clients' funds.

S 3. Subdivision 2 of section 446-a of the real property law, as amended by chapter 805 of the laws of 1980, is amended to read as follows:

2. "Apartment information vendor" means any person who engages in the business of claiming, demanding, charging, receiving, collecting, or contracting for the collection of, a fee from a customer for furnishing information concerning the location and availability of real property, including apartment housing, which may be leased, rented, shared or sublet as a private dwelling, abode, or place of residence. The definition of apartment information vendor shall include an apartment sharing agent which means any person who, for a fee, arranges, conducts, coordinates, handles or causes meetings between a customer and the current owner or occupant of legally occupied real property, including apartment housing, who wishes to share that housing with one or more individuals as a private dwelling, abode or place of residence, but it shall not apply TO A LICENSED REAL ESTATE BROKER WHO COMPILES AND PROVIDES FOR A FEE ONLINE LISTINGS OF REAL PROPERTY FOR RENT OR SALE, OR to any person who for another and for a fee, commission or other valuable consideration, supervises, organizes, arranges, coordinates, handles or is otherwise in charge of or responsible for the relocation of commercial or residential tenants from buildings or structures that are to be demolished, rehabilitated, remodeled or otherwise structurally altered.

S 4. This act shall take effect immediately.