

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 1 of section 440 of the real property law, as
2 amended by chapter 324 of the laws of 1998, is amended to read as
3 follows:
4 1. Whenever used in this article "real estate broker" means any
5 person, firm, limited liability company or corporation, who, for another
6 and for a fee, commission or other valuable consideration, lists for
7 sale, COMPILES AND PROVIDES ONLINE LISTINGS OF REAL PROPERTY FOR RENT OR
8 SALE, sells, at auction or otherwise, exchanges, buys or rents, or
9 offers or attempts to negotiate a sale, at auction or otherwise,
10 exchange, purchase or rental of an estate or interest in real estate, or
11 collects or offers or attempts to collect rent for the use of real
12 estate, or negotiates or offers or attempts to negotiate, a loan secured
13 or to be secured by a mortgage, other than a residential mortgage loan,
14 as defined in section five hundred ninety of the banking law, or other
15 incumbrance upon or transfer of real estate, or is engaged in the busi-
16 ness of a tenant relocater, or who, notwithstanding any other provision
17 of law, performs any of the above stated functions with respect to the
18 resale of condominium property originally sold pursuant to the
19 provisions of the general business law governing real estate syndication
20 offerings. In the sale of lots pursuant to the provisions of article
21 nine-A of this chapter, the term "real estate broker" shall also include
22 any person, partnership, association or corporation employed by or on
23 behalf of the owner or owners of lots or other parcels of real estate,
24 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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1 sion, or otherwise, to sell such real estate, or any parts thereof, in
2 lots or other parcels, and who shall sell or exchange, or offer or
3 attempt or agree to negotiate the sale or exchange, of any such lot or
4 parcel of real estate. For purposes of this subdivision the term,
5 "interest in real estate" shall include the sale of a business wherein
6 the value of the real estate transferred as part of the business is not
7 merely incidental to the transaction, and shall not include the assign-
8 ment of a lease, and further, the transaction itself is not otherwise
9 subject to regulation under state or federal laws governing the sale of
10 securities. In connection with the sale of a business the term "real
11 estate broker" shall not include a person, firm or corporation regis-
12 tered pursuant to the provisions of article twenty-three-A of the gener-
13 al business law or federal securities laws.

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

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

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

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

55 S 4. This act shall take effect immediately.