

2611

2009-2010 Regular Sessions

I N S E N A T E

February 25, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the real property law, in relation to licensing of residential realty managers

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

1 Section 1. The real property law is amended by adding a new article
2 12-D to read as follows:

3 ARTICLE 12-D

4 RESIDENTIAL REALTY MANAGERS

5 SECTION 448. DEFINITIONS.

6 448-A. LICENSE REQUIRED FOR RESIDENTIAL REAL PROPERTY MANAGE-
7 MENT.

8 448-B. REQUIREMENTS FOR A PROFESSIONAL LICENSE AS A RESIDENTIAL
9 REAL PROPERTY MANAGER.

10 448-C. OFFICIAL REGISTRY OF RESIDENTIAL REAL PROPERTY MANAGERS
11 TO BE KEPT BY THE SECRETARY.

12 448-D. ANNUAL REGISTRATION OF RESIDENTIAL REAL PROPERTY MANAG-
13 ERS.

14 448-E. RENEWAL OF LICENSES.

15 448-F. FIDUCIARY CAPACITY OF RESIDENTIAL REAL PROPERTY MANAGERS.

16 448-G. REVOCATION OR SUSPENSION OF LICENSE OF RESIDENTIAL REAL
17 PROPERTY MANAGER.

18 448-H. DENIAL OF LICENSE.

19 448-I. JUDICIAL REVIEW.

20 448-J. PENALTIES FOR VIOLATIONS.

21 448-K. STAY OR SUSPENSION OF SECRETARY'S DETERMINATION.

22 448-L. RULES AND REGULATIONS.

23 S 448. DEFINITIONS. 1. WHENEVER USED IN THIS ARTICLE THE TERM "RESI-
24 DENTIAL REAL PROPERTY MANAGEMENT" SHALL MEAN ONLY THE SUPERVISION OF THE
25 PERFORMANCE AND THE SERVICES TO BE RENDERED WITHIN A MULTIPLE DWELLING,

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

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1 BY ALL PERSONNEL. SUCH SERVICES REQUIRING SUPERVISION SHALL INCLUDE:
2 MAINTENANCE, TECHNICAL ASSESSMENTS, SECURITY, ENERGY CONSERVATION, CODE
3 COMPLIANCES, LABOR RELATIONS, FISCAL BUDGETARY RESPONSIBILITIES, TENANT
4 RELATIONS, GOVERNMENTAL RELATIONS AND JANITORIAL SERVICES.

5 2. THE TERM "RESIDENTIAL REAL PROPERTY MANAGER" SHALL MEAN A PERSON,
6 FIRM, ASSOCIATION OR CORPORATION, WHO PERFORMS SUPERVISORY RESIDENTIAL
7 REALTY MANAGEMENT SERVICES, EXCEPT THAT SUCH TERM SHALL NOT INCLUDE: (A)
8 ANY REGULARLY SALARIED OFFICER OR EMPLOYEE OF A RESIDENTIAL REAL PROP-
9 RTY MANAGER OR REALTY MANAGER WHO DOES NOT PERFORM RESIDENTIAL REAL PROP-
10 ERTY MANAGEMENT SERVICES OR WHOSE COMPENSATION IS NOT DIRECTLY DEPENDENT
11 UPON THE PERFORMANCE OF RESIDENTIAL REAL PROPERTY MANAGEMENT SERVICES;
12 (B) THE OWNER OF AN OWNER OCCUPIED MULTIPLE DWELLING; (C) ANY TENANT
13 ASSOCIATION; AND (D) ANY OWNER OF A DWELLING OF A MAXIMUM OF SIX UNITS,
14 WHICH SAID OWNER MAINTAINS, REPAIRS, OR OTHERWISE MANAGES HIMSELF OR
15 HERSELF, UNLESS SAID OWNER SHALL CHOOSE TO BECOME LICENSED HEREUNDER.

16 3. THE TERM "SECRETARY" MEANS THE SECRETARY OF STATE.

17 4. THE TERM "DEPARTMENT" SHALL MEAN THE DEPARTMENT OF STATE.

18 5. THE TERM "LICENSEE" SHALL MEAN ANY PERSON, FIRM, ASSOCIATION OR
19 CORPORATION, THAT HAS BEEN GRANTED A LICENSE TO ENGAGE IN RESIDENTIAL
20 REAL PROPERTY MANAGEMENT.

21 6. THE TERM "SUPERVISION" SHALL MEAN THE ADMINISTRATION, MANAGEMENT,
22 DIRECTION AND CONTROL OF THE DAILY OPERATION OF A RESIDENTIAL REAL PROP-
23 ERTY MANAGEMENT OFFICE.

24 S 448-A. LICENSE REQUIRED FOR RESIDENTIAL REAL PROPERTY MANAGEMENT. NO
25 PERSON, FIRM, ASSOCIATION OR CORPORATION SHALL ACT AS A RESIDENTIAL REAL
26 PROPERTY MANAGER IN THIS STATE OR USE THE TITLE "RESIDENTIAL REAL PROP-
27 ERTY MANAGER" WITHOUT HAVING AUTHORITY TO DO SO BY VIRTUE OF A LICENSE
28 ISSUED AND IN FORCE PURSUANT TO THE PROVISIONS OF THIS ARTICLE OR EXEMPT
29 FROM THE LICENSURE REQUIREMENTS OF THIS SECTION.

30 S 448-B. REQUIREMENTS FOR A PROFESSIONAL LICENSE AS A RESIDENTIAL REAL
31 PROPERTY MANAGER. 1. THE SECRETARY MAY ISSUE A LICENSE TO ANY PERSON,
32 FIRM, ASSOCIATION OR CORPORATION WHO HAS COMPLIED WITH THE REQUIREMENTS
33 OF THIS SECTION, AND SUCH REGULATIONS AS THE SECRETARY SHALL PROMULGATE
34 AUTHORIZING SUCH LICENSEE TO ACT AS A RESIDENTIAL REAL PROPERTY MANAGER
35 TO REPRESENT TO THE PUBLIC THAT HE IS A RESIDENTIAL REAL PROPERTY MANAG-
36 ER.

37 2. ANY SUCH LICENSE ISSUED TO A FIRM OR ASSOCIATION SHALL AUTHORIZE
38 ONLY THE MEMBERS THEREOF, NAMED IN SUCH LICENSE AS LICENSEES, TO ACT
39 INDIVIDUALLY AS RESIDENTIAL REAL PROPERTY MANAGERS THEREUNDER; ANY SUCH
40 LICENSE ISSUED TO A CORPORATION SHALL AUTHORIZE ONLY THE OFFICERS AND
41 DIRECTORS THEREOF, NAMED IN SUCH LICENSE AS LICENSEES, TO ACT INDIVID-
42 UALLY AS RESIDENTIAL REAL PROPERTY MANAGERS THEREUNDER.

43 3. EVERY INDIVIDUAL APPLICANT FOR A LICENSE UNDER THIS ARTICLE AND
44 EVERY PROPOSED LICENSEE SHALL:

45 (A) BE EIGHTEEN YEARS OF AGE OR OVER AT THE TIME OF THE ISSUANCE OF
46 SUCH LICENSE;

47 (B) BE A UNITED STATES CITIZEN OR AN ALIEN LAWFULLY ADMITTED FOR
48 PERMANENT RESIDENCE IN THE UNITED STATES;

49 (C) HAVE RECEIVED AN EDUCATION AT AN INSTITUTION APPROVED BY THE
50 SECRETARY AND THE COMMISSIONER OF EDUCATION INCLUDING STUDIES IN THE
51 OPERATIONS (TECHNICAL AND ADMINISTRATIVE), MAINTENANCE, SECURITY, ENERGY
52 CONSERVATION OF MULTIPLE DWELLINGS, THE OPERATION AND MAINTENANCE OF ALL
53 EQUIPMENT, MACHINERY AND FACILITIES OF MULTIPLE DWELLINGS; AND HAVE A
54 KNOWLEDGE AND UNDERSTANDING OF THE BASIC PRINCIPLES OF THE LAW OF AGEN-
55 CY, CONTRACTS, LABOR RELATIONS AND TENANT RELATIONS;

1 (D) FILE WITH THE DEPARTMENT AT ITS OFFICE IN ALBANY AN APPLICATION
2 FOR THE TYPE OF LICENSE DESIRED, IN SUCH FORM AND DETAIL AS THE DEPART-
3 MENT SHALL PRESCRIBE, SETTING FORTH THE FOLLOWING: (I) THE NAME AND
4 ADDRESS OF THE APPLICANT, AND IF AN INDIVIDUAL THE NAME UNDER WHICH HE
5 INTENDS TO CONDUCT BUSINESS; IF THE APPLICANT BE A FIRM OR ASSOCIATION
6 THE NAME AND RESIDENCE ADDRESS OF EACH MEMBER THEREOF AND THE NAME UNDER
7 WHICH THE BUSINESS IS TO BE CONDUCTED; OR, IF THE APPLICANT BE A CORPO-
8 RATION, THE NAME OF THE CORPORATION AND THE NAME AND RESIDENCE ADDRESS
9 OF EACH OF ITS OFFICERS; AND (II) THE PLACE OR PLACES, INCLUDING THE
10 CITY, TOWN OR VILLAGE, WITH THE STREET AND NUMBER, WHERE THE BUSINESS IS
11 TO BE CONDUCTED; AND

12 (E) FURNISH THE DEPARTMENT WITH SUCH FURTHER INFORMATION AS IT MAY
13 REQUIRE INCLUDING SUFFICIENT PROOF OF HAVING TAKEN AND PASSED A WRITTEN
14 EXAMINATION AND ANSWERED SUCH QUESTIONS AS MAY BE PREPARED OR CAUSED TO
15 HAVE BEEN PREPARED BY THE DEPARTMENT TO ENABLE IT TO DETERMINE THE
16 WORTHINESS OF THE APPLICANT IF AN INDIVIDUAL, OR OF EACH MEMBER OF A
17 FIRM OR ASSOCIATION OR OF EACH OFFICER OF A CORPORATION FOR WHOM A
18 LICENSE AS RESIDENTIAL REAL PROPERTY MANAGER IS REQUESTED. SUCH EXAMINA-
19 TION SHALL BE HELD AT SUCH TIMES AND AT SUCH PLACES AS THE SECRETARY
20 SHALL DETERMINE. EVERY INDIVIDUAL APPLYING TO TAKE ANY WRITTEN EXAMINA-
21 TION SHALL, AT THE TIME OF APPLYING THEREFOR, PAY A FEE OF FIFTY DOLLARS
22 TO THE DEPARTMENT, OR AT THE DISCRETION OF THE SECRETARY, DIRECTLY TO
23 ANY ORGANIZATION THAT IS UNDER CONTRACT WITH THE SECRETARY TO PROVIDE
24 EXAMINATION SERVICES, AN EXAMINATION FEE OF AN AMOUNT WHICH IS THE ACTU-
25 AL DOCUMENTED ADMINISTRATIVE COST OF CONDUCTING SAID QUALIFYING EXAMINA-
26 TION, AS CERTIFIED BY THE SECRETARY. THE EXAMINATION FEE REPRESENTS AN
27 ADMINISTRATIVE EXPENSE AND IS NONREFUNDABLE.

28 4. THE SECRETARY SHALL HAVE THE POWER TO WAIVE SUCH WRITTEN EXAMINA-
29 TION FOR ANY INDIVIDUAL SEEKING TO BE NAMED A LICENSEE WHO HAS BEEN
30 EMPLOYED, FULL-TIME, IN THE PROVISION AND SUPERVISION OF SERVICES WITHIN
31 A MULTIPLE DWELLING, INCLUDING TECHNICAL AND ADMINISTRATIVE SERVICES,
32 MAINTENANCE, SECURITY, ENERGY CONSERVATION, CODE COMPLIANCE, LABOR
33 RELATIONS, FISCAL BUDGETARY RESPONSIBILITIES, TENANT RELATIONS, GOVERN-
34 MENTAL RELATIONS AND JANITORIAL SERVICES FOR TWO YEARS PRECEDING THE
35 EFFECTIVE DATE OF THIS SECTION; PROVIDED, HOWEVER, THAT UPON APPLICATION
36 FOR RENEWAL OF A REAL PROPERTY MANAGER'S LICENSE, ANY APPLICANT FOR WHOM
37 A WRITTEN EXAMINATION HAS BEEN WAIVED, SHALL, PRIOR TO THE RENEWAL OF
38 HIS OR HER LICENSE, FURNISH THE DEPARTMENT WITH PROOF OF HAVING RECEIVED
39 AN EDUCATION OF THE KIND SPECIFIED IN PARAGRAPH (C) OF SUBDIVISION THREE
40 OF THIS SECTION.

41 5. EACH APPLICATION FOR A RESIDENTIAL REAL PROPERTY MANAGER'S LICENSE
42 UNDER THIS ARTICLE SHALL BE SUBSCRIBED BY THE APPLICANT; OR IF MADE BY A
43 FIRM OR ASSOCIATION IT SHALL BE SUBSCRIBED BY A MEMBER THEREOF, OR IF
44 MADE BY A CORPORATION IT SHALL BE SUBSCRIBED BY AN OFFICER THEREOF. EACH
45 APPLICATION SHALL CONTAIN AN AFFIRMATION BY THE PERSON SO SUBSCRIBING
46 THAT THE STATEMENTS THEREIN ARE TRUE UNDER THE PENALTIES OF PERJURY. AN
47 APPLICATION FOR A LICENSE SHALL BE ACCOMPANIED BY THE APPROPRIATE
48 LICENSE FEE, AS HEREINAFTER PRESCRIBED BY THIS ARTICLE.

49 6. (A) A LICENSE ISSUED OR REISSUED UNDER THE PROVISIONS OF THIS ARTI-
50 CLE SHALL ENTITLE THE PERSON, FIRM, ASSOCIATION OR CORPORATION TO ACT AS
51 A RESIDENTIAL REAL PROPERTY MANAGER IN THIS STATE UP TO AND INCLUDING
52 THE THIRTIETH DAY OF NOVEMBER OF THE YEAR IN WHICH THE LICENSE BY ITS
53 TERMS EXPIRES.

54 (B) FROM AND AFTER THE DATE WHEN THIS SUBDIVISION SHALL TAKE EFFECT,
55 THE TERM FOR WHICH A LICENSE SHALL BE ISSUED OR REISSUED SHALL BE A
56 PERIOD OF TWO YEARS.

1 7. (A) THE FEE FOR A LICENSE ISSUED OR REISSUED UNDER THE PROVISIONS
2 OF THIS ARTICLE ENTITLING A PERSON, FIRM, ASSOCIATION OR CORPORATION TO
3 ACT AS A RESIDENTIAL REAL PROPERTY MANAGER SHALL BE ONE HUNDRED FIFTY
4 DOLLARS. SUCH LICENSE FEE SHALL BE SUBJECT TO A BIENNIAL INCREASE OF TEN
5 PERCENT, WHERE SUCH INCREASE SHALL BE DEEMED NECESSARY AT THE DISCRETION
6 OF THE SECRETARY.

7 (B) IF THE LICENSE BE FOR A FIRM, ASSOCIATION OR CORPORATION, THE
8 LICENSE ISSUED TO IT SHALL ENTITLE THE PRESIDENT THEREOF TO ACT AS A
9 RESIDENTIAL REAL PROPERTY MANAGER. FOR EACH OTHER MEMBER OF THE FIRM OR
10 ASSOCIATION, OR OTHER OFFICER OF THE CORPORATION WHO SHALL DESIRE TO ACT
11 AS RESIDENTIAL REAL PROPERTY MANAGER ON BEHALF OF SUCH FIRM, ASSOCIATION
12 OR CORPORATION, THE FEE FOR THEIR LICENSE, SHALL BE THE SAME AS THE FEE
13 REQUIRED BY THIS SUBDIVISION.

14 S 448-C. OFFICIAL REGISTRY OF RESIDENTIAL REAL PROPERTY MANAGERS TO BE
15 KEPT BY THE SECRETARY. IT SHALL BE THE DUTY OF THE SECRETARY TO ENTER IN
16 A BOUND BOOK OR VOLUME TO BE KEPT BY HIM OR HER FOR THAT PURPOSE A LIST
17 OF ALL RESIDENTIAL REAL PROPERTY MANAGERS, WHICH SHALL BE KNOWN AND
18 DESIGNATED AS AND IS HEREBY MADE THE "OFFICIAL REGISTER OF RESIDENTIAL
19 REAL PROPERTY MANAGERS LICENSED IN THE STATE OF NEW YORK". THE SAID
20 "OFFICIAL REGISTER OF RESIDENTIAL REAL PROPERTY MANAGERS LICENSED IN THE
21 STATE OF NEW YORK" IS HEREBY DECLARED TO BE A PUBLIC RECORD AND PRESUMP-
22 TIVE EVIDENCE THAT THE INDIVIDUALS NAMED THEREIN ARE LICENSED TO PRAC-
23 TICE RESIDENTIAL REAL PROPERTY MANAGEMENT IN THIS STATE.

24 S 448-D. ANNUAL REGISTRATION OF RESIDENTIAL REAL PROPERTY MANAGERS. 1.
25 A RESIDENTIAL REAL PROPERTY MANAGER, OR SUB-LICENSEES THEREOF, LICENSED
26 AFTER THE ENACTMENT OF THIS SECTION SHALL FILE A REGISTRATION STATEMENT
27 WITHIN SIXTY DAYS OF THE DATE OF LICENSURE.

28 2. RESIDENTIAL REAL PROPERTY MANAGERS AND SUB-LICENSEES THEREOF SHALL
29 REGISTER ANNUALLY ON THE DATES PRESCRIBED BY THE SECRETARY. IN THE
30 EVENT OF A CHANGE IN INFORMATION PREVIOUSLY SUBMITTED, RESIDENTIAL REAL
31 PROPERTY MANAGERS, AND LICENSEES THEREOF, SHALL FILE AN AMENDED STATE-
32 MENT WITHIN THIRTY DAYS OF SUCH CHANGE.

33 3. THE SECRETARY SHALL PRESCRIBE THE CONTENT OF, AND FORM IN WHICH,
34 SUCH REGISTRY OF RESIDENTIAL REAL PROPERTY MANAGERS AND LICENSEES THERE-
35 OF SHALL BE MAINTAINED AND THE PROCEDURES FOR PUBLIC ACCESS THERETO, AND
36 MAY PROMULGATE ALL OTHER RULES AND REGULATIONS DEEMED NECESSARY AND
37 APPROPRIATE TO IMPLEMENT AND ENFORCE THE PROVISIONS OF THIS SECTION.

38 4. THE ANNUAL REGISTRATION FEE SHALL BE ONE HUNDRED FIFTY DOLLARS.

39 S 448-E. RENEWAL OF LICENSES. 1. ANY LICENSE GRANTED UNDER THE
40 PROVISIONS OF THIS ARTICLE MAY BE RENEWED BY THE DEPARTMENT UPON APPLI-
41 CATION THEREFOR BY THE HOLDER THEREOF, IN SUCH FORM AS THE DEPARTMENT
42 MAY PRESCRIBE, AND PAYMENT OF THE FEE FOR SUCH LICENSE. IN THE CASE OF
43 APPLICATION FOR RENEWAL OF LICENSE, THE DEPARTMENT MAY DISPENSE WITH THE
44 REQUIREMENT OF SUCH STATEMENTS AS IT DEEMS UNNECESSARY IN VIEW OF THOSE
45 CONTAINED IN THE ORIGINAL APPLICATION FOR LICENSE.

46 2. A RENEWAL PERIOD WITHIN THE MEANING OF THIS ARTICLE IS CONSIDERED
47 TO BE TWO YEARS FROM THE DATE OF EXPIRATION OF A PREVIOUSLY ISSUED
48 LICENSE.

49 3. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION FOUR OF SECTION FOUR
50 HUNDRED FORTY-EIGHT-B OF THIS ARTICLE, THE DEPARTMENT SHALL REQUIRE ANY
51 APPLICANT, WHO DOES NOT APPLY FOR RENEWAL OF LICENSE WITHIN SUCH PERIOD,
52 TO QUALIFY BY PASSING THE WRITTEN EXAMINATION AS PROVIDED HEREIN. THE
53 DEPARTMENT MAY REQUIRE ANY LICENSEE WHO DOES NOT PASS THE WRITTEN EXAM-
54 INATION, AND WHO CANNOT REASONABLY PROVE TO THE SATISFACTION OF THE
55 DEPARTMENT, THAT HE CAN MEET THE COMPETENCY REQUIREMENT, TO PASS THE
56 WRITTEN EXAMINATION BEFORE A RENEWAL OF LICENSE SHALL BE GRANTED.

1 S 448-F. FIDUCIARY CAPACITY OF RESIDENTIAL REAL PROPERTY MANAGERS.
2 EVERY RESIDENTIAL REAL PROPERTY MANAGER IN THIS STATE SHALL HAVE A FIDU-
3 CIARY RESPONSIBILITY FOR ALL FUNDS RECEIVED OR COLLECTED ON BEHALF OF
4 THE OWNER AND THE TENANTS OF MULTIPLE DWELLINGS AND SHALL NOT, WITHOUT
5 THE EXPRESS CONSENT OF SUCH OWNERS OR TENANTS, COMMINGLE ANY SUCH FUNDS
6 WITH HIS OR HER OWN FUNDS OR WITH FUNDS HELD BY HIM OR HER.

7 S 448-G. REVOCATION OR SUSPENSION OF LICENSE OF RESIDENTIAL REAL PROP-
8 ERTY MANAGER. 1. THE SECRETARY MAY REFUSE TO RENEW, REVOKE, OR MAY
9 SUSPEND, FOR A PERIOD HE OR SHE DETERMINES, THE LICENSE OF ANY RESIDEN-
10 TIAL REAL PROPERTY MANAGER, IF, AFTER NOTICE AND HEARING, HE OR SHE
11 DETERMINES THAT THE LICENSEE HAS:

12 (A) VIOLATED ANY PROVISION OF THIS ARTICLE OR VIOLATED ANY LAW IN THE
13 COURSE OF HIS OR HER DEALINGS IN SUCH CAPACITY;

14 (B) MADE A MATERIAL MISSTATEMENT IN THE APPLICATION FOR SUCH LICENSE;

15 (C) BEEN GUILTY OF FRAUDULENT OR DISHONEST PRACTICES; OR

16 (D) DEMONSTRATED HIS OR HER INCOMPETENCE TO ACT IN SUCH CAPACITY BY
17 ENGAGING IN ANY COURSE OF CONDUCT WHICH INCLUDES, BUT IS NOT LIMITED TO,
18 CAUSING THE INTERRUPTION OR DISCONTINUANCE OF ESSENTIAL SERVICES, INTER-
19 FERING WITH OR DISTURBING THE PEACE, COMFORT, REPOSE AND QUIET ENJOYMENT
20 OF A TENANT OR TENANTS.

21 2. BEFORE REVOKING OR SUSPENDING THE LICENSE OF ANY RESIDENTIAL REAL
22 PROPERTY MANAGER, THE SECRETARY SHALL GIVE NOTICE TO THE LICENSEE AND
23 SHALL HOLD, OR CAUSE TO BE HELD, A HEARING. THE HEARING SHALL BE HELD
24 NOT LESS THAN TEN DAYS AFTER THE GIVING OF SUCH NOTICE, AT SUCH TIME AND
25 PLACE AS THE DEPARTMENT SHALL PRESCRIBE.

26 3. THE REVOCATION OR SUSPENSION OF ANY RESIDENTIAL REAL PROPERTY
27 MANAGER'S LICENSE SHALL TERMINATE FORTHWITH THE LICENSE OF THE RESIDEN-
28 TIAL REAL PROPERTY MANAGER, AND IN THE CASE OF A FIRM, ASSOCIATION OR
29 CORPORATION, SHALL TERMINATE FORTHWITH THE AUTHORITY CONFERRED THEREBY
30 UPON ALL LICENSEES.

31 4. (A) NO PERSON WHOSE LICENSE HAS BEEN REVOKED SHALL BE ENTITLED TO
32 OBTAIN ANY LICENSE OF THE KIND WHICH WAS SO REVOKED FOR A PERIOD OF ONE
33 YEAR AFTER SUCH REVOCATION, OR, IF SUCH REVOCATION IS JUDICIALLY
34 REVIEWED, FOR ONE YEAR AFTER THE FINAL DETERMINATION THEREOF AFFIRMING
35 THE ACTION OF THE SECRETARY IN REVOKING SUCH LICENSE.

36 (B) IF ANY SUCH LICENSE HELD BY A FIRM, ASSOCIATION OR CORPORATION, IS
37 REVOKED, NO MEMBER OF SUCH FIRM OR ASSOCIATION, AND NO OFFICER OR DIREC-
38 TOR OF SUCH CORPORATION, SHALL BE ENTITLED TO OBTAIN ANY LICENSE OF THE
39 KIND WHICH WAS SO REVOKED, OR TO BE NAMED AS A LICENSEE IN ANY SUCH
40 LICENSE, FOR THE SAME PERIOD OF TIME, UNLESS THE SECRETARY DETERMINES,
41 AFTER NOTICE AND HEARING, THAT SUCH MEMBER, OFFICER OR DIRECTOR WAS NOT
42 PERSONALLY AT FAULT IN THE MATTER ON ACCOUNT OF WHICH SUCH LICENSE WAS
43 REVOKED.

44 S 448-H. DENIAL OF LICENSE. 1. THE DEPARTMENT SHALL, BEFORE MAKING A
45 FINAL DETERMINATION TO DENY AN APPLICATION FOR A LICENSE, NOTIFY THE
46 APPLICANT IN WRITING OF THE REASONS FOR SUCH PROPOSED DENIAL AND SHALL
47 AFFORD THE APPLICANT AN OPPORTUNITY TO BE HEARD IN PERSON OR BY COUNSEL
48 PRIOR TO DENIAL OF THE APPLICATION. SUCH NOTIFICATION SHALL BE SERVED IN
49 ANY MANNER AUTHORIZED BY THE CIVIL PRACTICE LAW AND RULES.

50 2. IF A HEARING IS REQUESTED, SUCH HEARING SHALL BE HELD AT SUCH TIME
51 AND PLACE AS THE DEPARTMENT SHALL PRESCRIBE. IF THE APPLICANT FAILS TO
52 MAKE A WRITTEN REQUEST FOR A HEARING WITHIN THIRTY DAYS AFTER RECEIPT OF
53 SUCH NOTIFICATION, THEN THE NOTIFICATION OF DENIAL SHALL BECOME THE
54 FINAL DETERMINATION OF THE DEPARTMENT.

55 3. (A) THE DEPARTMENT, ACTING BY SUCH OFFICER OR PERSON IN THE DEPART-
56 MENT AS THE SECRETARY MAY DESIGNATE, SHALL HAVE THE POWER TO SUBPOENA

1 AND BRING BEFORE THE OFFICER OR PERSON SO DESIGNATED ANY PERSON IN THIS
2 STATE, AND ADMINISTER AN OATH TO AND TAKE TESTIMONY OF ANY PERSON OR
3 CAUSE HIS OR HER DEPOSITION TO BE TAKEN. A SUBPOENA ISSUED UNDER THIS
4 SECTION SHALL BE REGULATED BY THE CIVIL PRACTICE LAW AND RULES.

5 (B) IF, AFTER SUCH HEARING, THE APPLICATION IS DENIED, WRITTEN NOTICE
6 OF SUCH DENIAL SHALL BE SERVED UPON THE APPLICANT IN ANY MANNER AUTHOR-
7 IZED BY THE CIVIL PRACTICE LAW AND RULES.

8 (C) DENIAL OF A LICENSE UNDER THIS SECTION SHALL IN NO WAY AFFECT AN
9 APPLICANT'S RIGHT TO REAPPLY.

10 S 448-I. JUDICIAL REVIEW. THE ACTION OF THE DEPARTMENT IN GRANTING OR
11 REFUSING TO GRANT OR TO RENEW A LICENSE UNDER THIS ARTICLE, OR IN REVOK-
12 ING OR SUSPENDING SUCH A LICENSE, OR IMPOSING ANY FINE OR REPRIMAND ON
13 THE HOLDER THEREOF OR REFUSING TO REVOKE OR SUSPEND SUCH LICENSE OR
14 IMPOSE ANY FINE OR REPRIMAND SHALL BE SUBJECT TO REVIEW BY A PROCEEDING
15 BROUGHT UNDER AND PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRAC-
16 TICE LAW AND RULES AT THE INSTANCE OF THE APPLICANT FOR SUCH LICENSE,
17 THE HOLDER OF A LICENSE SO REVOKED OR SUSPENDED, THE PERSON FINED OR
18 REPRIMANDED OR THE PERSON AGGRIEVED.

19 S 448-J. PENALTIES FOR VIOLATIONS. 1. THE SECRETARY, IN LIEU OF REVOK-
20 ING OR SUSPENDING THE LICENSE OF A LICENSEE IN ACCORDANCE WITH THE
21 PROVISIONS OF THIS SECTION, MAY IN ANY ONE PROCEEDING BY ORDER, REQUIRE
22 THE LICENSEE TO PAY TO THE PEOPLE OF THIS STATE, A PENALTY IN A SUM NOT
23 EXCEEDING FIVE HUNDRED DOLLARS FOR EACH OFFENSE, AND A PENALTY IN A SUM
24 NOT EXCEEDING TWENTY-FIVE HUNDRED DOLLARS IN THE AGGREGATE FOR ALL
25 OFFENSES.

26 2. ANY PERSON, FIRM, ASSOCIATION OR CORPORATION VIOLATING ANY
27 PROVISION OF THIS ARTICLE SHALL BE GUILTY OF A MISDEMEANOR. THE COMMIS-
28 SION OF A SINGLE ACT PROHIBITED BY THIS ARTICLE SHALL CONSTITUTE A
29 VIOLATION HEREOF.

30 3. CRIMINAL ACTIONS FOR VIOLATIONS OF THIS ARTICLE SHALL BE PROSECUTED
31 BY THE ATTORNEY GENERAL, OR HIS OR HER DEPUTY, IN THE NAME OF THE PEOPLE
32 OF THE STATE, AND IN ANY SUCH PROSECUTION THE ATTORNEY GENERAL, OR HIS
33 OR HER DEPUTY, SHALL EXERCISE ALL THE POWERS AND PERFORM ALL THE DUTIES
34 WHICH THE DISTRICT ATTORNEY WOULD OTHERWISE BE AUTHORIZED TO EXERCISE OR
35 TO PERFORM THEREIN. THE ATTORNEY GENERAL SHALL, UPON A CONVICTION FOR A
36 VIOLATION OF ANY PROVISION OF THIS ARTICLE, AND WITHIN TEN DAYS THERE-
37 AFTER, MAKE AND FILE WITH THE SECRETARY A DETAILED REPORT SHOWING THE
38 DATE OF SUCH CONVICTION, THE NAME OF THE PERSON CONVICTED AND THE EXACT
39 NATURE OF THE CHARGE.

40 4. IN CASE THE OFFENDER SHALL HAVE RECEIVED ANY SUM OF MONEY AS
41 COMPENSATION OR PROFIT BY OR IN CONSEQUENCE OF HIS OR HER VIOLATION OF
42 ANY PROVISION OF THIS ARTICLE, HE OR SHE SHALL ALSO BE LIABLE TO A
43 PENALTY OF NOT LESS THAN THE AMOUNT OF THE SUM OF MONEY RECEIVED BY HIM
44 OR HER AS SUCH COMPENSATION OR PROFIT AND NOT MORE THAN THREE TIMES THE
45 SUM SO RECEIVED BY HIM OR HER, AS MAY BE DETERMINED BY THE COURT, WHICH
46 PENALTY MAY BE SUED FOR AND RECOVERED BY ANY PERSON AGGRIEVED AND FOR
47 HIS OR HER USE AND BENEFIT, IN ANY COURT OF COMPETENT JURISDICTION.

48 5. THE SECRETARY SHALL HAVE THE POWER TO ENFORCE THE PROVISIONS OF
49 THIS ARTICLE AND UPON COMPLAINT OF ANY PERSON, OR ON HIS OR HER OWN
50 INITIATIVE, TO INVESTIGATE THE BUSINESS, BUSINESS PRACTICES AND BUSINESS
51 METHODS OF ANY PERSON, FIRM, ASSOCIATION OR CORPORATION APPLYING FOR OR
52 HOLDING A LICENSE AS A RESIDENTIAL REALTY MANAGER OR REALTY MANAGER, IF
53 IN HIS OR HER OPINION SUCH INVESTIGATION WARRANTED. EACH SUCH APPLICANT
54 OR LICENSEE SHALL BE OBLIGED, ON REQUEST OF THE SECRETARY TO SUPPLY SUCH
55 INFORMATION AS MAY BE REQUIRED CONCERNING HIS OR HER OR ITS BUSINESS,

1 BUSINESS PRACTICES OR BUSINESS METHODS, OR PROPOSED BUSINESS PRACTICES
2 OR METHODS.

3 6. FOR THE PURPOSE OF ENFORCING THE PROVISIONS OF THIS ARTICLE AND IN
4 MAKING INVESTIGATIONS RELATING TO ANY VIOLATION THEREOF, AND FOR THE
5 PURPOSE OF INVESTIGATING THE CHARACTER, COMPETENCY AND INTEGRITY OF THE
6 APPLICANTS OR LICENSEES HEREUNDER, AND FOR THE PURPOSE OF INVESTIGATING
7 THE BUSINESS, BUSINESS PRACTICES AND BUSINESS METHODS OF ANY APPLICANT
8 OR LICENSEE, OR OF THE OFFICERS OR AGENTS THEREOF, THE SECRETARY SHALL
9 HAVE THE POWER TO SUBPOENA AND BRING BEFORE THE OFFICER OR PERSON SO
10 DESIGNATED ANY PERSON IN THIS STATE AND REQUIRE THE PRODUCTION OF ANY
11 BOOKS OR PAPERS WHICH HE DEEMS RELEVANT TO THE INQUIRY, AND ADMINISTER
12 AN OATH TO AND TAKE TESTIMONY OF ANY PERSON OR CAUSE HIS OR HER DEPOSI-
13 TION TO BE TAKEN WITH THE SAME FEES AND MILEAGE AND IN THE SAME MANNER
14 AS PRESCRIBED BY LAW FOR CIVIL CASES IN A COURT OF RECORD, EXCEPT THAT
15 ANY APPLICANT OR LICENSEE OR OFFICER OR AGENT THEREOF SHALL NOT BE ENTI-
16 TLED TO SUCH FEES AND/OR MILEAGE. ANY PERSON, DULY SUBPOENAED, WHO FAILS
17 TO OBEY SUCH SUBPOENA WITHOUT REASONABLE CAUSE OR WITHOUT SUCH CAUSE
18 REFUSES TO BE EXAMINED OR TO ANSWER ANY LEGAL OR PERTINENT QUESTION AS
19 TO THE CHARACTER OR QUALIFICATION OF SUCH APPLICANT OR LICENSEE OR SUCH
20 APPLICANT'S OR LICENSEE'S BUSINESS, BUSINESS PRACTICES AND METHODS OF
21 SUCH VIOLATIONS, SHALL BE GUILTY OF A MISDEMEANOR.

22 7. IN ANY CRIMINAL PROCEEDING BEFORE ANY COURT, MAGISTRATE OR GRAND
23 JURY, OR UPON ANY INVESTIGATION BEFORE THE DEPARTMENT FOR A VIOLATION OF
24 ANY OF THE PROVISIONS OF THIS SECTION, THE COURT, MAGISTRATE OR GRAND
25 JURY, OR THE SECRETARY, HIS OR HER DEPUTY OR OTHER OFFICER CONDUCTING
26 THE INVESTIGATION, MAY CONFER IMMUNITY, IN ACCORDANCE WITH THE
27 PROVISIONS OF THE CRIMINAL PROCEDURE LAW.

28 S 448-K. STAY OR SUSPENSION OF SECRETARY'S DETERMINATION. THE
29 COMMENCEMENT OF AN ARTICLE SEVENTY-EIGHT PROCEEDING UNDER THE CIVIL
30 PRACTICE LAW AND RULES, TO REVIEW THE ACTION OF THE SECRETARY IN GRANT-
31 ING OR REFUSING TO GRANT, OR IN RENEWING OR REFUSING TO RENEW A LICENSE
32 UNDER THIS ARTICLE, OR IN REVOKING OR SUSPENDING SUCH LICENSE, OR IMPOS-
33 ING ANY FINE OR REPRIMAND SHALL STAY SUCH ACTION OF THE SECRETARY FOR A
34 PERIOD OF THIRTY DAYS. SUCH STAY SHALL NOT BE EXTENDED FOR A LONGER
35 PERIOD UNLESS THE COURT SHALL DETERMINE, AFTER A PRELIMINARY HEARING,
36 THAT A STAY OF THE SECRETARY'S ACTION PENDING THE FINAL DETERMINATION OF
37 FURTHER ORDER OF THE COURT WILL NOT UNDULY INJURE THE INTERESTS OF THE
38 PEOPLE OF THE STATE. THE DEPARTMENT MUST BE GIVEN AT LEAST FORTY-EIGHT
39 HOURS NOTICE PRIOR TO SAID PRELIMINARY HEARING.

40 S 448-L. RULES AND REGULATIONS. THE SECRETARY MAY PROMULGATE RULES AND
41 REGULATIONS NECESSARY TO ACCOMPLISH THE PURPOSES OF THIS ARTICLE.

42 S 2. This act shall take effect on the first of January next succeed-
43 ing the date on which it shall have become a law.