

1048

2011-2012 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 5, 2011

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Introduced by M. of A. PHEFFER -- read once and referred to the Committee on Judiciary

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:

1     Section 1. Paragraph (a) of subdivision 1 of section 441-c of the real  
2     property law, as amended by chapter 81 of the laws of 1995, is amended  
3     to read as follows:  
4     (a) The department of state may revoke the license of a real estate  
5     broker or salesman or suspend the same, for such period as the department  
6     may deem proper, or in lieu thereof may impose a [fine] CIVIL  
7     PENALTY not exceeding [one] TWO thousand dollars payable to the department  
8     of state, or a reprimand upon conviction of the licensee of a  
9     violation of any provision of this article, or for a material misstatement  
10    in the application for such license, or if such licensee has been  
11    guilty of fraud or fraudulent practices, or for dishonest or misleading  
12    advertising, or has demonstrated untrustworthiness or incompetency to  
13    act as a real estate broker or salesman, as the case may be. In the case  
14    of a real estate broker engaged in the business of a tenant relocater,  
15    untrustworthiness or incompetency shall include engaging in any course  
16    of conduct including, but not limited to, the interruption or discontinuance  
17    of essential building service, that interferes with or disturbs  
18    the peace, comfort, repose and quiet enjoyment of a tenant.  
19    S 2. Subdivision 2 of section 441-e of the real property law, as  
20    amended by chapter 505 of the laws of 2001, is amended to read as  
21    follows:  
22    2. Revocation, suspension, reprimands, fines. The department of state  
23    shall, before revoking or suspending any license or imposing any fine or

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

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

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

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

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

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

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