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

2582

2011-2012 Regular Sessions

I N A S S E M B L Y

January 19, 2011

Introduced by M. of A. GABRYSZAK -- Multi-Sponsored by -- M. of A. CROUCH, HOOPER -- read once and referred 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:

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

ARTICLE 12-D

RESIDENTIAL REALTY MANAGERS

SECTION 448. DEFINITIONS.
448-A. LICENSE REQUIRED FOR RESIDENTIAL REAL PROPERTY MANAGEMENT.
448-B. REQUIREMENTS FOR A PROFESSIONAL LICENSE AS A RESIDENTIAL REAL PROPERTY MANAGER.
448-C. OFFICIAL REGISTRY OF RESIDENTIAL REAL PROPERTY MANAGERS TO BE KEPT BY THE SECRETARY.
448-D. ANNUAL REGISTRATION OF RESIDENTIAL REAL PROPERTY MANAGERS.
448-E. RENEWAL OF LICENSES.
448-F. FIDUCIARY CAPACITY OF RESIDENTIAL REAL PROPERTY MANAGERS.
448-G. REVOCATION OR SUSPENSION OF LICENSE OF RESIDENTIAL REAL PROPERTY MANAGER.
448-H. DENIAL OF LICENSE.
448-I. JUDICIAL REVIEW.
448-J. PENALTIES FOR VIOLATIONS.
448-K. STAY OR SUSPENSION OF SECRETARY'S DETERMINATION.
448-L. RULES AND REGULATIONS.

S 448. DEFINITIONS. 1. WHENEVER USED IN THIS ARTICLE THE TERM "RESIDENTIAL REAL PROPERTY MANAGEMENT" SHALL MEAN ONLY THE SUPERVISION OF THE 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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BY ALL PERSONNEL. SUCH SERVICES REQUIRING SUPERVISION SHALL INCLUDE: MAINTENANCE, TECHNICAL ASSESSMENTS, SECURITY, ENERGY CONSERVATION, CODE COMPLIANCES, LABOR RELATIONS, FISCAL BUDGETARY RESPONSIBILITIES, TENANT RELATIONS, GOVERNMENTAL RELATIONS AND JANITORIAL SERVICES.

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

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

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

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

6. THE TERM "SUPERVISION" SHALL MEAN THE ADMINISTRATION, MANAGEMENT, DIRECTION AND CONTROL OF THE DAILY OPERATION OF A RESIDENTIAL REAL PROPERTY MANAGEMENT OFFICE.

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

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

2. ANY SUCH LICENSE ISSUED TO A FIRM OR ASSOCIATION SHALL AUTHORIZE ONLY THE MEMBERS THEREOF, NAMED IN SUCH LICENSE AS LICENSEES, TO ACT INDIVIDUALLY AS RESIDENTIAL REAL PROPERTY MANAGERS THEREUNDER; ANY SUCH LICENSE ISSUED TO A CORPORATION SHALL AUTHORIZE ONLY THE OFFICERS AND DIRECTORS THEREOF, NAMED IN SUCH LICENSE AS LICENSEES, TO ACT INDIVIDUALLY AS RESIDENTIAL REAL PROPERTY MANAGERS THEREUNDER.

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

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

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

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

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

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

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

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

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

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

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

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

S 448-C. OFFICIAL REGISTRY OF RESIDENTIAL REAL PROPERTY MANAGERS TO BE KEPT BY THE SECRETARY. IT SHALL BE THE DUTY OF THE SECRETARY TO ENTER IN A BOUND BOOK OR VOLUME TO BE KEPT BY HIM OR HER FOR THAT PURPOSE A LIST OF ALL RESIDENTIAL REAL PROPERTY MANAGERS, WHICH SHALL BE KNOWN AND DESIGNATED AS AND IS HEREBY MADE THE "OFFICIAL REGISTER OF RESIDENTIAL REAL PROPERTY MANAGERS LICENSED IN THE STATE OF NEW YORK". THE SAID "OFFICIAL REGISTER OF RESIDENTIAL REAL PROPERTY MANAGERS LICENSED IN THE STATE OF NEW YORK" IS HEREBY DECLARED TO BE A PUBLIC RECORD AND PRESUMPTIVE EVIDENCE THAT THE INDIVIDUALS NAMED THEREIN ARE LICENSED TO PRACTICE RESIDENTIAL REAL PROPERTY MANAGEMENT IN THIS STATE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. ANY PERSON, FIRM, ASSOCIATION OR CORPORATION VIOLATING ANY PROVISION OF THIS ARTICLE SHALL BE GUILTY OF A MISDEMEANOR. THE COMMISSION OF A SINGLE ACT PROHIBITED BY THIS ARTICLE SHALL CONSTITUTE A VIOLATION HEREOF.

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

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

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

BUSINESS PRACTICES OR BUSINESS METHODS, OR PROPOSED BUSINESS PRACTICES OR METHODS.

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

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

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

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

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.