

Vermont Statutes Relating to Real Estate Agents

Containing

COMPREHENSIVE INDEX
ANNOTATIONS FOR CASES

For Use By

Randy Mayhew School of Real Estate
www.randymayhew.com

In Connection With

Preparing for the Broker and Salesperson Vermont License Examination

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TITLE 26

CHAPTER 41. REAL ESTATE BROKERS AND SALESPERSONS

Subchapter I. General Provisions

§ 2211. Definitions

(a) When used in this chapter, the following definitions shall have the following meanings except where the context clearly indicates that another meaning is intended:

(1) "Commission" shall mean the Vermont Real Estate Commission.

(2) "Person" shall mean and include individuals, corporations, partnerships, trusts, associations, cooperatives, or other firms or entities, foreign or domestic.

(3) "Real estate," "real property," "realty," or words of like import, shall mean any interest or estate in land, excepting leaseholds, whether such interest or estate is corporeal, incorporeal, freehold, or nonfreehold, and whether situated in this state or elsewhere; provided, however, that the meaning as used in this chapter shall not include oil, gas, or mineral leases, nor shall it include any other mineral leasehold, mineral estate, or mineral interest of any nature whatsoever.

(4) "Real estate broker," or "broker," shall mean any person who, for another, for a fee, commission, salary, or other consideration, or with the intention or expectation of receiving or collecting such compensation from another, engages in or offers or attempts to engage in, either directly or indirectly, by a continuing course of conduct, any of the following acts:

(A) lists, offers, attempts or agrees to

list real estate or any interest therein for sale or exchange;

(B) sells, exchanges or purchases real estate or any interest therein;

(C) offers to sell, exchange or purchase real estate or any interest therein;

(D) negotiates, or offers, attempts or agrees to negotiate the sale, exchange or purchase of real estate, or any interest therein;

(E) buys, sells, offers to buy or sell, or otherwise deals in options on real estate or any interest therein;

(F) advertises or holds himself or herself out as being engaged in the business of buying, selling or exchanging real estate or any interest therein;

(G) assists or directs in the procuring of prospects, calculated to result in the sale or exchange of real estate or any interest therein; however, a nonlicensed employee of a licensee shall be allowed to respond to inquiries from members of the public, so long as the employee makes it clear that he or she is not licensed and that any information provided should be confirmed by a licensed person.

(5) "Real estate salesperson" or "salesperson" means any person who for a fee, compensation, salary, or other consideration, or in the expectation or upon the promise thereof, is employed by or associated with a licensed real estate broker to do any act or deal in any transaction as provided in subdivision (a)(4) of this section for or on behalf of such licensed real estate broker.

(b) The terms "real estate broker," "real

estate salesperson" or "broker" shall not be held to include:

(1) any person, partnership, association or corporation who as a bona fide owner performs any of the aforesaid acts with reference to property owned by them, nor shall it apply to regular employees thereof, where such acts are performed in the regular course of or as an incident to the management of such property and the investment therein. This subdivision shall not apply to licensees;

(2) any attorney at law, admitted to practice in Vermont, handling sales of real estate in the course of estate or guardianship administration, or trust administration, bankruptcy proceedings, receiverships, or like actions subject to approval by a court of competent jurisdiction, or sales of real estate arising in the usual course of the practice of law;

(3) any person selling real estate as an auctioneer, provided such sale is advertised as a bona fide public auction;

(4) any bank or trust company or any of its officers or employees in the performance of their duties as an officer or employee of any such bank or trust company while performing activities listed in subdivision (a)(4) of this section with respect to real estate owned by that bank or trust company;

(5) any person holding in good faith a duly executed power of attorney from the owner, authorizing a final consummation and execution for the sale, purchase or exchange of real estate when such acts are not of a recurrent nature and done with the intention of evading this section;

(6) any person while acting as a receiver,

trustee, administrator, executor, guardian, or under court order, or while acting under authority of a deed, trust, or will;

(7) public officers while performing their duties as such;

(8) any person who leases real estate or any interest therein or any improvements affixed thereon, or offers to lease, negotiates the lease of, or advertises as being in the business of leasing real estate;

(9) any person registered as a securities dealer or salesperson by the commissioner of banking, insurance, securities, and health care administration pursuant to chapter 131 of Title 9 when selling securities.

Annotations

1. This section does not provide a so-called "single transactions" exemption. Office of Professional Regulation v. McElroy, 175 Vt. 507 (2003)

2. A person acting as a mere "finder" is not acting as a real estate broker as defined in this section. Garafano v. Wells, 142 Vt. 641 (1983)

3. Under this section, the principal broker of a corporation holding a real estate license is the "alter ego" of that corporation and is vicariously liable for any violations of this chapter and rules promulgated thereunder by any licensee working for the corporation. In re Desautels Real Estate, Inc., 142 Vt. 326 (1982).

§ 2212. Prohibition

Except as may be otherwise provided in this chapter, a person, firm, partnership, association or corporation shall not engage in the business or act in the capacity of real estate broker or salesperson within this state without first obtaining a license therefor.

§ 2213. Penalties

A person who shall violate any provision of this chapter shall be subject to the penalties provided in subsection 127(c) of Title 3.

§ 2214. Trust and escrow accounts

(a) Every real estate broker, within five banking days, shall deposit in a trust or escrow account in a bank or other financial institution licensed to do business in this state all earnest money and contract deposits held by him or her as a real estate broker in which the clients or other persons with whom the broker is dealing have an interest. Trust and escrow accounts shall be maintained separate and apart from a broker's individual or office account. The broker shall maintain at the broker's usual place of business, books, records, contracts and other documents pertinent to or relating to the trust or escrow account and moneys therein, which shall be open for inspection by the commission and its duly authorized agents at the broker's usual place of business during regular business hours. The broker shall notify the commission, within ten days after opening any trust or escrow account, of the bank or other financial institution in which the account is located.

(b) If a deposit is reasonably expected to earn a substantial amount of interest, the broker shall, at the request of the person or persons making the deposit, place the deposit in an individual interest-bearing trust or escrow account for the benefit of the beneficial owner. In regard to individual interest-bearing trust and escrow accounts:

(1) Unless otherwise agreed to in writing by all parties, the interest earned shall be applied to the purchase price due from the

buyer if the sale is consummated, shall be returned to the buyer if the deposit is returned to the buyer, and shall be payable to the seller if the buyer defaults. Contracts shall carry this language conspicuously above the signature lines.

(2) No checks shall be drawn against uncollected deposits in the account.

(3) None of the contract deposits shall be withdrawn until the contract has been terminated by performance, or by operation of its own terms, or by agreement in writing between all parties involved in the contract, or by order of a court of competent jurisdiction.

(c) If a deposit is not reasonably expected to earn a substantial amount of interest, the broker shall place the deposit in a pooled interest-bearing trust or escrow account and direct that the interest be remitted to the Vermont housing finance agency in accordance with the provisions of 8 V.S.A. § 14210.

(d) The broker shall inform the depositor whether funds are deposited into an individual account pursuant to subsection (b) of this section or in a pooled account pursuant to subsection (c) of this section. The broker shall retain a written statement of this disclosure signed by the beneficial owner of the account.

Subchapter II. Administration

§ 2251. Real estate commission

(a) A Vermont real estate commission is created, consisting of seven members. One member of the commission shall be an attorney at law. Two shall be members of the public who have no financial interest in the activities regulated under this chapter, other than as consumers or possible consumers of its services. These persons shall have no financial interest personally or through a spouse, parent, child, brother or sister. "Financial interest" means dealing in goods or services which are uniquely related to activities regulated under this chapter, or investing anything of value in a business licensed under this chapter.

(b) Three members of the commission shall be licensed real estate brokers whose vocations shall have been that of real estate broker for at least four years. At least one of the broker members shall not be a member of a professional real estate association at the time of appointment or at any time during tenure as a member. One of the commission members shall be a licensed salesperson. If a salesperson becomes a broker while serving on the commission, that salesperson shall become ineligible to continue to serve as the salesperson member of the commission.

(c) Commission members shall be appointed by the governor pursuant to sections 129b and 2004 of Title 3. To the extent possible, appointments shall be geographically representative.

Annotations

1. This section is constitutional, there being no significant impairment of associational rights and no demonstrable injury from having to disclose membership in an association. Further, the requirement that at least one broker not be a member of a professional association rationally relates to a legitimate state interest in broad representation on the commission. Vermont Association of Realtors, Inc. v. State, 156 Vt. 525 (1991).

§ 2252. Powers and duties

(a) The commission shall adopt rules in accordance with chapter 25 of Title 3 necessary for the performance of its duties, including:

(1) a definition of the activities which may be performed only by a licensee, in accordance with section 2211 of this title;

(2) qualifications for obtaining licensure, in accordance with section 2292 of this title;

(3) explanations of appeal and other significant rights given to applicants and the public;

(4) procedures for disciplinary and reinstatement cases;

(5) criteria for determining whether or not a deposit is reasonably expected to earn a substantial amount of interest in accordance with subsections 2214(b) and (c) of this title. The criteria shall include, but not be limited to the following:

(A) The amount of the deposit and the time period the deposit is expected to be held.

(B) The cost of establishing and

maintaining an interest-bearing account, including minimum account balances, service charges, legal fees, accounting fees and tax reporting procedures.

(C) The nature of the transaction involved.

(b) The commission shall:

(1) if applications for licensure by examination are pending, offer examinations at least four times each year and pass upon the qualifications of applicants for licensing;

(2) use the administrative and legal services provided by the office of professional regulation under 3 V.S.A. chapter 5;

(3) investigate suspected unprofessional conduct.

(c) The commission may:

(1) investigate suspected cases of unauthorized practice of activities regulated by this chapter, and refer any such case to the attorney general or a state's attorney for possible prosecution and injunctive relief;

(2) conduct hearings;

(3) administer oaths and issue subpoenas pursuant to sections 809a and 809b of Title 3;

(4) issue orders relating to discovery in the same manner as a judge under the Vermont Rules of Civil Procedure, which may be enforced in the same manner as a subpoena;

(5) adopt rules relating to the procedures to be followed in handling complaints and conducting hearings under this chapter;

(6) receive assistance from the attorney general or other state agencies, so long as the assistance is not contrary to any other state law.

(d) The commission shall provide proposed rules to the director of the office of professional regulation for review and comment. The director's comments shall be forwarded to the administrative rules committee.

Annotations

1. Use of the word "including" followed by specifically listed items in the provision relating to the commission's authority to promulgate rules does not limit the authority to the specifically enumerated items. The commission has authority to promulgate any rule necessary for the performance of its duties. Vermont Association of Realtors, Inc. v. State, 156 Vt. 525 (1991)

§ 2253. Commission procedures

(a) Annually, the commission shall meet to elect a chairperson, a vice-chairperson and a secretary.

(b) Meetings may be called by the chairperson and shall be called upon the request of any other two members.

(c) Meetings shall be warned and conducted in accordance with chapter 5 of Title 1.

(d) A majority of the members of the commission shall be a quorum for transacting business, and all action shall be taken upon a majority vote of the members present and voting.

Subchapter III. Licenses

§ 2254. Repealed.

§ 2255. Fees

(a) Applicants and persons regulated under this chapter shall pay the following fees:

(1) Application

- (A) Broker license \$ 50.00
- (B) Salesperson license \$ 50.00
- (C) Brokerage firm registration \$ 50.00
- (D) Branch office registration \$ 50.00

(2) Biennial renewal of broker or salesperson license \$ 200.00

(3) Biennial brokerage firm or branch office registration renewal \$ 200.00

(4) Temporary permit \$ 25.00

(5) Transfer of license \$ 10.00

(6) Transfer to inactive status \$ 25.00

(b) [Repealed.]

§ 2291. General provisions

(a) A real estate license shall not be authority for more than one person to perform the activities listed in section 2211 of this chapter.

(b) A registered brokerage firm shall designate in its application the individual who is to serve as the principal broker under the brokerage firm registration.

(c) Every applicant for licensure shall have attained the age of majority.

§ 2292. Eligibility

(a) A license as a real estate broker shall be granted to a person who satisfies all of the following:

(1) Has passed an examination as required by the commission.

(2) Has gained at least two years' experience satisfactory to the commission as a licensed salesperson, including at least eight separate and unrelated closed transactions.

(3) Has completed a course of instruction of at least 40 hours, approved by the commission.

(b) (1) A license as a real estate salesperson shall be granted to a person who satisfies all of the following:

(A) has passed an examination as required by the commission;

(B) is at least 18 years of age;

(C) has been employed by or become associated with a brokerage firm and that firm's principal broker; and

(D) has completed a course of instruction, approved by the commission, of at least 40 hours.

(2) (A) An initial salesperson license shall expire 90 days from issuance.

(B) The license of a salesperson who has provided documentation to the Commission showing successful completion of eight hours of instruction addressing topics specified by the Commission relating to the salesperson's postlicensure practice of the profession shall be renewed without application or fee and remain valid until the end of the biennial licensing period.

(c) The commission may waive all or a part of the examination requirement if the applicant is a real estate broker or salesperson regulated under the laws of another jurisdiction, who is in good standing to practice in that jurisdiction and, in the opinion of the commission, the jurisdiction's examination is substantially equal to that required by this chapter.

Annotations

1. Under this licensing scheme it is clear that the legislature intended to impose vicarious liability upon the employers of salespersons for any violations of the prescribed conduct set forth in this chapter and the regulations of the commission. In re Desautels Real Estate, Inc., 142 Vt. 326 (1982)

§ 2292a. Examinations

(a) The commission shall select and administer examinations for licensure. The commission may use independent testing services or others to assist in the

administration of written examinations.

(b) Examinations and examination procedures shall be fair and reasonable and shall be designed to ensure that all applicants are licensed if they demonstrate that they possess the minimal occupational qualifications which are consistent with the public health, safety and welfare. They shall not be designed or implemented for the purpose of limiting the number of licensees.

§ 2293. Renewal of license; expired license

(a) Licenses shall be renewed every two years without examination and on payment of the required fees, provided that the person applying for renewal completes at least 24 hours of instruction for brokers and 16 hours of instruction for salespersons, approved by the Commission, during the preceding two-year period. Four hours of this continuing education instruction shall address legislation and other topics specified by the Commission for each renewal period.

(b) (1) A broker or salesperson applying for reinstatement of a license that has expired shall be assessed both the renewal fee and late renewal penalty established by the Director of the Office of Professional Regulation and shall not be assessed renewal fees for the years during which the license was expired.

(2) Reinstatement shall not take place until the applicant completes the continuing education required for the previous renewal period.

(c) (1) If a broker or salesperson's license has expired for greater than five consecutive years, the broker or salesperson shall apply for reinstatement in accordance with the initial licensure requirements as set forth in

section 2292 of this chapter, including a course of instruction and examination.

(2) The Commission may waive the reinstatement requirements based upon licensed practice in another state.

(d) The Commission may waive or postpone compliance with the instructional requirements of this section in cases of extreme hardship on the part of the licensee. No licensee, however, may receive a postponement or waiver for two successive two-year periods of licensure. The Commission may accept fewer hours of continuing education instruction for renewal of a license on a prorated basis following an initial licensing period of less than two years.

§ 2294. Change of name or location

(a) Whenever a licensed broker desires to be licensed under a different name, the broker shall pay the fee established under section 2255 of this chapter. Notice of any change in the names and addresses of the licensees shall be given to the Commission within 30 days after the change becomes effective.

(b) Each licensee shall notify the Commission in writing of any change of the licensee's principal business location, and the Commission shall issue a new license with the new address for the fee established under section 2255 of this chapter.

(c) If a brokerage firm maintains more than one place of business within the State, a branch office registration is required for each branch office so maintained. Branch offices shall use the same registered brokerage firm name as the main office and shall designate a licensed broker in charge for each branch office.

§ 2295. Display of license

All licenses shall be conspicuously displayed within licensee's place of business.

§ 2296. Unprofessional conduct

Unprofessional conduct means the following conduct and the conduct set forth in section 129a of Title 3:

(1) makes a material misstatement in the application for his license;

(2) uses dishonest or misleading advertising;

(3) demonstrates incompetency to act as a real estate broker or salesperson;

(4) is found by the Commission to be guilty of fraud or fraudulent practices; or is convicted for violating this chapter; or is convicted of forgery, embezzlement, obtaining money under false pretenses, or conspiring to defraud;

(5) commingles money or other property to which the licensee's clients or other persons are entitled with the licensee's own, except to the extent nominal sums of the licensee's funds may be required to maintain an open trust account;

(6) fails to inform clients, establish trust and escrow accounts, maintain records and otherwise act in accordance with the provisions of section 2214 of this chapter with respect to all moneys received by the licensee as a real estate broker, or as escrow agent, or as the temporary custodian of the funds of others, in a real estate transaction;

(7) fails promptly to segregate any properties received which are to be held

for the benefit of others;

(8) is found by the Commission to have engaged in any act or conduct, whether of the same or different character as that described in this section, which contributes to or demonstrates incompetency or dishonest fraudulent dealings;

(9) fails to fully disclose to a buyer all material facts within the licensee's knowledge concerning the property being sold;

(10) fails to fully disclose to a buyer the existence of an agency relationship between the licensee and the seller.

§ 2297. Nonresident broker

A nonresident of the state, who has held a real estate broker's or salesperson's license in the previous state of residence for a period of two years prior to applying for a license, may be licensed to act in a similar capacity in this state by conforming to the provisions of this chapter regarding application for and securing of license, except that the application shall be accompanied by a statement from the regulatory body of the other state concerning whether the applicant has been the subject of any criminal or disciplinary investigation or action.

§ 2298. Repealed.

§ 2299. Death of broker; temporary license

In the event of the death of a licensed real estate broker, the Commission may, upon application by the broker's legal representative, issue without examination a temporary license to such legal representative or to an individual designated by the representative or the broker and approved by the Commission on payment of the prescribed fee established under section 2255 of this chapter. Such temporary licensee may continue to transact said real estate business for a period not to exceed one year. A temporary licensee shall not enter into new brokerage service agreements.

§ 2300. Repealed.

TITLE 3

CHAPTER 5. SECRETARY OF STATE

Subchapter III. Professional Regulation

§ 125. Fees

(a) In addition to the fees otherwise authorized by law, a board may charge the following fees:

(1) Verification of license, \$20.00.

(2) An examination fee established by the secretary, which shall be no greater than the costs associated with examinations.

(3) Reinstatement fees for expired licenses pursuant to section 127 (unauthorized practice) of this title.

[irrelevant portions omitted]

(c) Notwithstanding any provisions of law to the contrary, a board shall not require payment of renewal fees for years during which a license was lapsed.

§ 127. Unauthorized Practice

(a) When the office receives a complaint of unauthorized practice, the director shall refer the complaint to the appropriate board for investigation.

(b) A person practicing a regulated profession without authority may, upon the complaint of the attorney general or a state's attorney or an attorney assigned by the office of professional regulation, be enjoined therefrom by the superior court where the violation occurred or the Washington county superior court and may be assessed a civil penalty of not more than \$1,000.00. The attorney general or any attorney assigned by the office of professional regulation may elect to bring an action seeking only a civil penalty of not more than \$1,000.00 for practicing a regulated

professional without authority before the board having regulatory authority over the profession. Hearings shall be conducted in the same manner as disciplinary hearings. A civil penalty imposed by a board or administrative law officer under this subsection shall be deposited in the professional regulatory fee fund established in section 124 of this title for the purpose of providing education and training for board members and advisor appointees. The director shall detail in the annual report receipts and expenses from these civil penalties.

(c) In addition to other provisions of law, unauthorized practice shall be punishable by a fine of not more than \$5,000.00 or imprisonment for not more than one year, or both. Prosecution may occur upon the complaint of the attorney general or a state's attorney or an attorney assigned by the office of professional regulation under this section and shall not act as a bar to civil or administrative proceedings involving the same conduct.

(d) (1) A person whose license has expired for not more than one biennial period may reinstate the license by meeting renewal requirements for the profession, paying the profession's renewal fee, and paying the following nondisciplinary reinstatement penalty:

(A) if reinstatement occurs within 30 days after the expiration date, \$100.00; or

(B) if reinstatement occurs more than 30 days after the expiration date, an amount equal to the renewal fee increased by \$40.00 for every additional month or fraction of a month, provided the total penalty shall not exceed \$1,500.00.

(2) Fees assessed under this subsection shall be deposited into the Regulatory Fee Fund and credited to the appropriate fund for the profession of the reinstating licensee.

(3) A licensee seeking reinstatement may submit a petition for relief from the reinstatement penalty, which a board may grant only upon a finding of exceptional circumstances or extreme hardship to the licensee.

(4) Practice by a licensee with an expired license that continues for more than two years, or practicing at any time when the licensee knew or should have known the license was expired, may be prosecuted by the State as unauthorized practice under this section or as unprofessional conduct pursuant to subdivision 129a(a)(3) of this title.

(e) A person practicing a licensed profession without authority shall not institute any proceedings in this State for the enforcement of any right or obligation if at the time of the creation of the right or obligation the unlicensed person was acting without authority.

(f) The provisions of this section shall be in addition to any other remedies or penalties for unauthorized practice established by law.

§ 129a. Unprofessional conduct

(a) In addition to any other provision of law, the following conduct by a licensee constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of a license or other disciplinary action. Any one of the following items, or any combination of items, whether or not the conduct at issue was committed within or outside the state, shall constitute unprofessional conduct:

(1) Fraudulent or deceptive procurement or use of a license.

(2) Advertising that is intended or has a tendency to deceive.

(3) Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession.

(4) Failing to comply with an order of the board or violating any term or condition of a license restricted by the board.

(5) Practicing the profession when medically or psychologically unfit to do so.

(6) Delegating professional responsibilities to a person whom the licensed professional knows, or has reason to know, is not qualified by training, experience, education or licensing credentials to perform them, or knowingly providing professional supervision or serving as a preceptor to a person who has not been licensed or registered as required by the laws of that person's profession.

(7) Willfully making or filing false reports or records in the practice of the profession; willfully impeding or obstructing the proper making or filing of reports or records or willfully failing to file the proper reports or records.

(8) [Omitted as irrelevant]

(9) Failing to retain client records for a period of seven years, unless laws specific to the profession allow for a shorter retention period. When other laws or agency rules require retention for a longer period of time, the longer retention period shall apply.

(10) Conviction of a crime related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession.

(11) Failing to report to the office a conviction of any felony or misdemeanor offense in a Vermont District Court, a Vermont Superior Court, a federal court, or a court outside Vermont within 30 days.

(12) Exercising undue influence on or taking improper advantage of a person using professional services, or promoting the sale of services or goods in a manner which exploits a person for the financial gain of the practitioner or a third party.

(13) Performing treatments or providing services which the licensee is not qualified to perform or which are beyond the scope of the licensee's education, training, capabilities, experience, or scope of practice.

(14) Failing to report to the office within 30 days a change of name, e-mail, or mailing address.

(15) Failing to exercise independent professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession.

(16) (A) Impeding an investigation under this chapter or unreasonably failing to reply, cooperate, or produce lawfully requested records in relation to such investigation....

(B)...[A] confidentiality agreement entered into in concluding a settlement of a civil claim shall not exempt the licensee from fulfilling his or her obligations under this subdivision....

(21) Permitting one's name or license to be used by a person, group, or corporation when not actually in charge of or responsible for the professional services provided....

(b) Failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct, whether actual injury to a client, patient, or customer has occurred. Failure to practice competently includes:

(1) performance of unsafe or unacceptable patient or client care; or

(2) failure to conform to the essential standards of acceptable and prevailing practice.

(c) The burden of proof in a disciplinary action shall be on the state to show by a preponderance of the evidence that the person has engaged in unprofessional conduct.

(d) After hearing, and upon a finding of unprofessional conduct, a board or an administrative law officer may take disciplinary action against a licensee or applicant, including imposing an administrative penalty not to exceed

\$1,000.00 for each unprofessional conduct violation. Any money received under this subsection shall be deposited in the professional regulatory fee fund established in section 124 of this title for the purpose of providing education and training for board members and advisor appointees. The director shall detail in the annual report receipts and expenses from money received under this subsection.

(e) In the case where a standard of unprofessional conduct as set forth in this section conflicts with a standard set forth in a specific board's statute or rule, the standard that is most protective of the public shall govern.

§ 129b. Board member... appointments

(a) Notwithstanding any provision of law to the contrary relating to terms of office and appointments for members of boards attached to the office of professional regulation, all board members appointed by the governor shall be appointed for staggered five-year terms and shall serve at the pleasure of the governor. Appointments under this section shall not be subject to the advice and consent of the senate. The governor may remove any member of a board as provided in section 2004 of this title. Vacancies created other than by expiration of a term shall be filled in the same manner that the initial appointment was made for the unexpired portion of the term. Terms shall begin on January 1 of the year of appointment and run through December 31 of the last year of the term. The governor may request nominations from any source but shall not be bound to select board members from among the persons nominated. As provided in section 2004 of this title, board members shall hold office and serve until a successor has been

appointed.

(b) Board members shall not serve more than two consecutive terms. Members appointed to fill a vacancy created before the end of a term shall not be deemed to have served a term for purposes of this section.

(c) Boards shall meet annually, in September or the first meeting scheduled thereafter, to elect a chair, vice-chair and secretary.

(d) Meetings may be called by the chair or shall be called upon the request of any other two board members.

(e) Meetings shall be warned and conducted in accordance with chapter 5 of Title 1, the open meeting law.

(f) Notwithstanding any provisions of law to the contrary, board members and advisors for all professions attached to the office of professional regulation shall be entitled to compensation, at a rate provided in 32 V.S.A. § 1010 , for performance of official duties and other duties directly related to the efficient conduct of necessary business of a board or the office.

(g) [Omitted as not relevant]

§ 2004. Term of governor's appointees

Notwithstanding any other provision of law, all ... members of state boards and commissions appointed by the governor... shall serve at the pleasure of the governor until the end of the term, if any, for which they were appointed and until a successor has been appointed and qualified.

[Added for informational purposes is the following statute relating to boards powers in the disciplinary process although this is not on the examination study list.]

§ 129. Powers of boards; discipline process

(a) In addition to any other provisions of law, a board may exercise the following powers:

(1) Adopt procedural rules governing the investigatory and disciplinary process.

(2) Issue subpoenas and administer oaths in connection with any authorized hearing, investigation or disciplinary proceeding. Subpoenas may be issued ex parte by the chair of the board, the director, or any attorney representing a party. Depositions may be taken after charges upon due notice to all parties without specific authorization by the board.

(3) Issue warnings or reprimands, suspend, revoke, limit, condition, deny, or prevent renewal of licenses, after disciplinary hearings or, in cases requiring emergency action, immediately suspend, as provided by section 814 of this title. In a case involving noncompliance with a statute or rule relating to administrative duties not related to patient, client, or customer care, a board or hearing officer may determine that ordering a monetary civil penalty does not constitute a finding of unprofessional conduct.

(4) Reinstate or deny reinstatement of a license which has been revoked, suspended, limited or conditioned.

(5) Discipline any licensee or refuse to license any person who has had a license application denied or a license revoked,

suspended, limited, conditioned, or otherwise disciplined by a licensing agency in another jurisdiction for conduct which would constitute unprofessional conduct in this state, or has surrendered a license while under investigation for unprofessional conduct.

(6) Notify relevant state, federal and local agencies and appropriate bodies in other states of the status of any disciplinary case against an applicant or licensee, provided the board has taken disciplinary action or has served a notice of charges against the person.

(7) Refuse to accept the return of a license tendered by the subject of a disciplinary investigation or refuse to allow an applicant who is the subject of a disciplinary investigation to withdraw his or her application without permission of the board.

(8) - (9) [Omitted by editor]

(10) Issue temporary licenses during a declared state of emergency [balance omitted by editor]

(11) Treat as incomplete any license application submitted with a check subsequently returned for insufficient funds.

(12) Waive or modify continuing education requirements for persons on active duty in the United States armed forces.

(13) Administer a Vermont statutes and rules examination as a condition of licensure, renewal, or reinstatement.

(14) [Omitted by editor; honorary licensees]

(b) A board ... shall receive complaints from any course, or may investigate without receiving a complaint.

(c) (1) Boards and administrative law officers sitting in disciplinary cases shall do so impartially and without ex parte knowledge of the case in controversy.

(2) A State prosecuting attorney assigned by the Office of Professional Regulation shall be responsible for prosecuting disciplinary cases before boards or administrative law officers.

(3) The Office may assign one or more board members or advisors to assist Office investigators and the prosecutor in relation to the investigation and prosecution of licensing and disciplinary matters. If a board member has served in this capacity, the member shall not participate in ex parte communications with other board members regarding the case and shall not participate in deliberating or deciding the case.

(d) A board shall notify parties, in writing, of their right to appeal final decisions of the board. A board or the director shall also notify complainants in writing of the result of any disciplinary investigation made with reference to a complaint brought by them to the board or director. When a disciplinary investigation results in a stipulation filed with the board, the board or the director shall provide the complainant with a copy of the stipulation and notice of the stipulation review scheduled before the board. The complainant shall have the right to be heard at the stipulation review.

(e) When a board ... intends to deny an application for a license, the board ... shall send the applicant written notice of the decision by certified mail. The notice shall include a statement of the reasons for the action and shall advise the applicant that the applicant may file a petition within 30 days of the date on which the notice is mailed with the board ... for review of its ... preliminary

decision. At the hearing, the applicant shall bear the burden of proving that the preliminary denial should be reversed and that the license should be granted. After the hearing, the board ... shall affirm or reverse the preliminary denial, explaining the reasons therefor in writing.

(f) (1) A board may appoint a hearing officer, who shall be an attorney admitted to practice in this state, to conduct a hearing that would otherwise be heard by the board. A hearing officer appointed under this subsection may administer oaths and exercise the powers of the board properly incidental to the conduct of the hearing.

(2) When a hearing is conducted by a hearing officer, the officer shall report findings of fact and conclusions of law to the board. The report shall be made within 60 days of the conclusion of the hearing unless the board grants an extension. The provisions of section 811 of this title regarding proposals for decision shall not apply to the hearing officer report.

(3) The board may take additional evidence and may accept, reject or modify the findings and conclusions of the hearing officer. Judgment on the findings shall be rendered by the board.

(g) A board may authorize any of the following:

(1) Its chair or legal counsel to grant continuances of scheduled hearings.

(2) Its chair or legal counsel to grant or deny stays pending appeal.

(3) Its chair or legal counsel to convene pre-hearing conferences.

(4) Its legal counsel to preside at hearings for the purpose of making procedural and evidentiary rulings. The board may overrule a ruling by legal counsel under this subdivision.

(h) A board member, hearing officer or administrative law officer having a personal or pecuniary interest or the appearance of a personal or pecuniary interest in the outcome of any board decision shall not participate in

deciding the matter. A board member, hearing officer or administrative law officer whose disqualification is sought shall either disqualify himself or herself or, without ruling on the request for disqualification, refer the request to the secretary of state, who shall rule on the request. The ruling of the secretary of state on a request for disqualification shall be final and shall be subject to review only upon appeal of a final order of a board under section 130a of this title or of an administrative law officer under subsection (j) of this section. When a board is unable to convene a quorum by reason of disqualification, resignation, vacancy or necessary absence, the secretary of state shall appoint ad hoc members to serve on the board for that matter only, after consulting with the chair of the board involved. Ad hoc members shall have the same qualifications as required by law for the absent members.

(i) A board may consult with the attorney general or an attorney assigned by the office of professional regulation for the proper conduct of its affairs.

(j) Notwithstanding the provisions of section 130a of this title, hearings involving denials of licensure... shall be heard by an administrative law officer appointed by the Secretary of State.

(k) Whenever completion of certain continuing education requirements is a condition of renewal, the board may require the applicant to develop and complete a specific corrective action plan, to be completed within 90 days.

(l) A board may grant a temporary renewal license pending the completion of the required continuing education.

(m) In any proceeding under this section which addresses an applicant's or licensee's alleged sexual misconduct, evidence of the sexual history of the victim of the alleged sexual misconduct shall neither be subject to discovery nor be admitted into evidence. Neither opinion evidence of nor evidence of the reputation of the victim's sexual conduct shall be admitted.

§ 133. Business Registration

When professional services are required by law to be performed in or by a business entity registered with the Office, the business entity shall:

- (1) register with the Corporations Division of the Office of the Secretary of State, if required by law; and
- (2) separately register with the Office each name under which the business entity will conduct business, register licensees, and advertise in Vermont.

End

End of License Law.