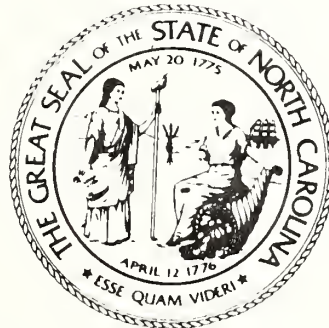


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RENTAL REFERRAL AGENCIES



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REPORT TO THE
1985 GENERAL ASSEMBLY
OF NORTH CAROLINA
1986 SESSION



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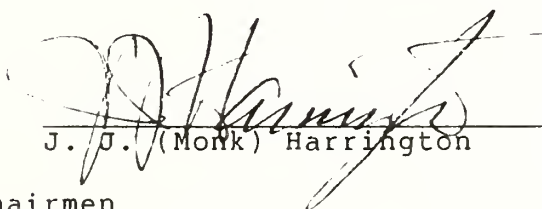
TO THE MEMBERS OF THE 1985 GENERAL ASSEMBLY (1986 Session):

The Legislative Research Commission herewith reports to the 1985 General Assembly (1986 Session) on the matter of rental referral agencies. The report is made pursuant to Chapter 790 of the 1985 Session Laws.

This report was prepared by the Legislative Research Commission's Committee on Rental Referral Agencies and is transmitted by the Legislative Research Commission for your consideration.

Respectfully submitted,


Liston B. Ramsey


J. J. (Monk) Harrington

Cochairmen
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION

Senator J. J. Harrington, Cochairman
Senator Henson P. Barnes
Senator A. D. Guy
Senator Ollie Harris
Senator Lura Tally
Senator Robert D. Warren

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Representative Barney Paul Woodard

TABLE OF CONTENTS

I.	Letter of Transmittal	1
II.	Legislative Research Commission Membership	2
III.	Table of Contents	3
IV.	Introduction	4
V.	Background	6
VI.	Committee Proceedings	10
VII.	Findings & Recommendations	12
VIII.	Appendices	
	Appendix A Enabling Legislation	
	Appendix B Committee Membership	
	Appendix C "Rentex" Case	
	Appendix D House Small Business Committee Minutes	
	Appendix E Relevant Statutes	
	Appendix F Presentations	
	Appendix G States Survey and Memorandum	
	Appendix H North Carolina Rental Agencies	

INTRODUCTION

The Legislative Research Commission, created by Article 6B of Chapter 120 of the General Statutes, is authorized at the direction of the General Assembly "to make or cause to be made such studies of, and investigations into, governmental agencies and institutions and matter of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner," "to report to General Assembly the results of the studies made," and that submitted reports "may be accompanied by recommendations of the Commission and bills suggested to effectuate the recommendations." (G.S. 120-30.17) The Commission is chaired by the Speaker of the House of Representatives and the President Pro Tempore of the Senate and consists of five Representatives and five Senators who are appointed respectively by the Cochairmen. (G.S. 120-130.10(a))

At the direction of the 1985 General Assembly, the Legislative Research Commission has undertaken studies of 32 matters which have grouped in ten areas of related subject matter. Each member of the Commission was delegated the responsibility of overseeing one group of studies and causing the findings and recommendations of the various committees to be reported to the Commission. The Cochairmen of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c),

appointed committees consisting of members of the General Assembly and/or public members to conduct the studies. In addition, one Senator and one Representative from each study committee were designated Committee Cochairmen.

The study of rental referral agencies was authorized by Section 1(22) of Chapter 790 of the 1985 Session Laws. That act states that the Commission may consider House Bill 1421 in determining the nature, scope, and aspects of the study. Section 1 of House Bill 1421 reads: "The Legislative Research Commission is authorized to study Article 23 'Rental Referral Agencies' of Chapter 66 'Commerce and Business'." **(Relevant Portions of Chapter 790 and House Bill 1421 are included in Appendix A.)**

The Legislative Research Commission grouped this study in its State Regulation area under the direction of Senator A. D. Guy. The Committee was chaired by Representative Daniel T. Blue, Jr. and Senator William W. Staton. **(The full membership of the committee is listed in Appendix B of this report.)**

The minutes of the Committee meetings reflect the statements and discussions of each meeting. These minutes are included in the Committee files which are available for review in the Legislative Library.

BACKGROUND

In 1975 the General Assembly considered HB 171, which was ratified as Chapter 108 of the 1975 Session Laws, which expanded the definition of real estate broker in the following manner:

"A broker shall also be deemed to include a person, partnership, association, or corporation who for a fee sells or offers to sell the name or names of persons, partnerships, associations, or corporations who have real estate for rental, lease, or sale."

In 1976 the North Carolina Court of Appeals heard the appeal of the case of North Carolina Real Estate Licensing Board v. David Aikens, individually and T/A Rentex, 31 N. C. App. 8, in which the above inclusion of rental referral agencies under the control of the N. C. Real Estate Licensing Board was challenged as a violation of Article I, Sections 1 and 19 of the N. C. Constitution.

Article I, Section 1 of the applicable Constitution states:

"Section 1. The equality and rights of persons. We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and enjoyment of the fruits of their own labor, and the pursuit of happiness."

Article I, Section 19 of the applicable Constitution states:

"Section 19. Law of the land; equal protection of the laws. No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State

because of race, color, religion, or national origin."

The facts of the case are that on October 10, 1975, an agent of the N. C. Real Estate Licensing Board entered the defendant's business, a rental referral agency, and paid \$20.00 for the opportunity to consult the defendant's listing of rentals. Prior to that time the agency had contacted landlords in Winston-Salem and offered to list their rental properties for free. The agent determined that the agency was not licensed pursuant to the new statute ratified the prior April, and sought an injunction in the Superior Court in Forsyth County to prevent the defendant from performing the functions of a real estate broker. The injunction was granted, the defendant appealed, the Court of Appeals stayed the injunction.

The Court of Appeals decision describes the business of rental referral agencies in the following manner: "The defendant's business activity consists only of selling for a modest fee the addresses of property for rent, some information about the features of the properties, and the phone numbers of the lessors."

The Court of Appeals discussed the Constitutional requirements that the exercise of police power to regulate business must be reasonably related to the protection of health, morals, safety or general welfare of the public. It then went on to describe the two aspects of real estate brokering which permitted regulation under the police power.

"(1) the characteristics of trust and confidence in the relationship between broker and client, which provide opportunities for collusion to extract illicit gains and which make the bond analogous to that between attorney and client; and (2) the economic significance of the real estate business, which was similar to that of the banking industry."

The Court found that the business of rental referral agencies in the sale of lists of addresses of property for rent and the telephone numbers of the lessors did not involve confidential relationships with customers nor negotiations or other acts as intermediaries. Therefore, it was, the Court held, an arbitrary and irrational exercise of the police power to require the defendant to obtain a license as a real estate broker. Further, the Court held that the sections of the Constitution upon which the appeal was based guarantee the right to pursue ordinary and simple occupations free from governmental regulation, and for these reasons the new statute was unconstitutional. (See Appendix C for a copy of this case.)

There appears to have been a period during which the rental referral agencies were unregulated and during which numbers of abuses were reported to Better Business Bureaus and the Consumer Protection Section of the Attorney General's Office. As a result, in 1981 the General Assembly added Article 23 "Rental Referral Agencies" to Chapter 66 "Commerce and Business" of the General Statutes.

On May 22, 1985, just prior to the deadline for the introduction of public bills, Representative Charles D. Woodward of Wayne County, the Chairman of the Small Business Committee of the House of Representatives, introduced HB 1338 with the short title "Rental Referral Agency". This was a blank bill whose substance was "This act amends Article 23 'Rental Referral Agencies' of Chapter 66 'Commerce and Business'." The bill was referred to the House Committee on Small Business on May 27, 1985.

On June 27, 1985 the bill was considered in the House Committee. The committee voted to give the bill an unfavorable report and on July 2, 1985 the bill was reported unfavorably to the House. (See Appendix D for a copy of the Small Business Committee minutes and report.)

On July 11, 1985, Representative Stamey introduced HB 1421. House Bill 1421 was referred, the same day it was introduced, to the House Appropriations Committee and incorporated in Chapter 790 of the 1985 Session Laws, the chapter that authorized the Legislative Research Commission to study various subjects.

COMMITTEE PROCEEDINGS

The Committee, during its two meetings (on March 4, 1986 and April 2, 1986), heard testimony and discussed various issues concerning rental referral agencies in North Carolina.

The Committee studied, in detail, Article 23 of Chapter 66 of the General Statutes, the laws regulating rental referral agencies, and related statutes. (See Appendix E for copies of these statutes.)

The Committee heard testimony from proponents and opponents of changes to the current statutes, and from the North Carolina Attorney General's Office. (See Appendix F for a list of persons making presentations to the Committee.)

The Committee considered the results of a survey of the other states concerning their regulation of rental referral agencies to compare this State's statutes with similar statutes from other jurisdictions to determine whether or not North Carolina's laws were more restrictive than those found in other states. (See Appendix G for a memorandum from the Committee Counsel summarizing the results of the survey.)

The Committee solicited comments from the five existing rental referral agencies concerning their operations under the existing statutes. (See Appendix H for a list rental referral agencies.)

Finally, the Committee was informed by the proponents of changes to the current statutes that they no longer were supporting changes to the current law.

FINDINGS AND RECOMMENDATIONS

THE COMMITTEE FINDS that Article 23 of Chapter 66 of the General Statutes does not overregulate rental referral businesses.

THE COMMITTEE RECOMMENDS that there is no need, at the present time, to amend Article 23 of Chapter 66 of the General Statutes.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1985
RATIFIED BILL

Appendix A

CHAPTER 790
SENATE BILL 636

AN ACT AUTHORIZING STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, MAKING TECHNICAL AMENDMENTS THERETO, AND TO MAKE OTHER AMENDMENTS.

The General Assembly of North Carolina enacts:

Section 1. Studies Authorized. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1985 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

- (1) Continuation of the Study of Revenue Laws (H.J.R. 17-Lilley),
- (2) Continuation of the Study of Water Pollution Control (H.J.R. 141-Evans),
- (3) Adolescent Sexuality Teaching (H.J.R. 275-Jerals),
- (4) Continuation of the Study on the Problems of the Aging (H.J.R. 322-Greenwood),
- (5) Continuation of the Study of Municipal Incorporations (H. J. R. 389-Greenwood),
- (6) School Discipline (H.J.R. 861-Colton),
- (7) Bail Bondsmen and Bail Bond Forfeiture (H. B. 967-Watkins),
- (8) Preventative Medicine (H.B. 1052-Locks),
- (9) Life Care Arrangements (H. B. 1053-Locks),
- (10) State Personnel System (H.B. 1064-Wiser),
- (11) Long-Term Health Care Insurance (H. B. 1103-Locks),
- (12) Itinerant Merchants (H. B. 1170-Lancaster),
- (13) Manufactured Housing Zoning (H. B. 1178-Ballance; S. B. 636-Plyler),
- (14) Interest Rate Regulation (H. J. R. 1227-Evans),
- (15) Underground Storage Tank Leakage Hazards and other ground water hazards (H. B. 1281-Locks),
- (16) Mental Patient Commitments (H. J. R. 1313-Miller),
- (17) High-Level Radioactive Waste Disposal (H. B. 1373-Diamont; S. B. 655-Hipps),
- (18) Stun Guns (H. J. R. 1390-McDowell),
- (19) Continuation of the Study of Water Quality in Haw River and B. Everett Jordan Reservoir (H. J. R. 1393-Hackney),
- (20) Authority of Boards of County Commissioners in Certain Counties over Commissions, Boards and Agencies (H. J. R. 1405-Holroyd),
- (21) Superintendent of Public Instruction and State Board of Education (H. J. R. 1412-Nye),
- (22) Rental Referral Agencies (H. B. 1421-Staney),
- (23) Child Abuse Testimony Study (S. B. 165-Hipps),
- (24) Home Schooling Programs (S. J. B. 224-Winner),
- (25) Pretrial Release (S. J. B. 297-Winner),

- (26) Inmate Substance Abuse Therapy Program (S.J.B. 317-Plyler),
- (27) Inmate Work-Release Centers (S.B. 406-Swain),
- (28) Community College System (S.B. 425-Martin),
- (29) Community Service Alternative Punishment and Restitution (S.B. 495-Swain),
- (30) State Employee Salaries and Benefits (S.B. 514-Jordan),
- (31) State Infrastructure Needs (S.B. 541-Royall),
- (32) Commercial Laboratory Water Testing (S.B. 573-Taft),
- (33) Outdoor Advertising (S.B. 611-Thomas, R.P.),
- (34) Premium Tax Rate on Insurance Companies (S.B. 633-Hardison)
- (35) Continuation of the Study of Child Support (S.B. 638-Marvin),
- (36) Local Government Financing (S.B. 670-Rauch),
- (37) Medical Malpractice and Liability (S.B. 703-Taft),
- (38) Marketing of Perishable Food (S.B. 718-Basnight),
- (39) Child Protection (S.B. 802-Hipps),
- (40) Legislative Ethics and Lobbying (S.B. 829-Rauch),
- (41) Satellite Courts (S.B. 850-Barnes),
- (42) Substantive Legislation in Appropriations Bills (S.B. 851-Band),
- (43) School Finance Act (S.B. 848-Taft).

Sec. 2. Transportation Problems at Public Facilities. The Legislative Research Commission may identify and study transportation problems at public transportation facilities in North Carolina.

Sec. 2.1. The Legislative Research Commission may study the feasibility of the prohibition of investment by the State Treasurer of stocks of the retirement systems listed in G.S. 147-69.2(b)(6), or of the assets of the trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1 and G.S. 147-69.2(19) in a financial institution that has outstanding loans to the Republic of South Africa or in stocks, securities, or other obligations of a company doing business in or with the Republic of South Africa.

Sec. 3. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1987 General Assembly, or the Commission may make an interim report to the 1986 Session and a final report to the 1987 General Assembly.

Sec. 4. Bills and Resolution References. The listing of the original bill or resolution in this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 5. The last sentence of G.S. 120-19.4(b) is amended by deleting the citation "G.S. 5-4" and inserting in lieu thereof the following: "G.S. 5A-12 or G.S. 5A-21, whichever is applicable".

Sec. 6. G.S. 120-99 is amended by adding a new paragraph to read:

"The provisions of G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that the chairman shall sign all subpoenas on behalf of the Committee.

Sec. 7. G.S. 120-30.17 is amended by adding a new subsection to read:

"(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it."

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 18th day of July, 1985.

ROBERT B. JORDAN III

Robert B. Jordan III
President of the Senate

LISTON B. RAMSEY

Liston B. Ramsey
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1985

HOUSE BILL 1421

Short Title: Rental Referral Agencies/LRC. (Public)

Sponsors: Representative Stamey.

Referred to: Appropriations.

July 11, 1985

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY
ARTICLE 23 "RENTAL REFERRAL AGENCIES" OF CHAPTER 66 "COMMERCE
AND BUSINESS".

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission is
authorized to study Article 23 "Rental Referral Agencies" of
Chapter 66 "Commerce and Business". The study shall:

(1) Analyze whether or not Article 23 of Chapter 66
governing the operations of Rental Referral Agencies over-
regulates this business, and, if so,

(2) To recommend amendments to Article 23 of Chapter
66.

Sec. 2. This act is effective upon ratification.

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RENTAL REFERRAL AGENCIES
LRC STUDY COMMITTEE

MEMBERSHIP

Sen. William W. Staton,
CoChairman
P.O. Box 1320
Sanford, NC 27330

Rep. Daniel T. Blue, Jr.,
CoChairman
P.O. Box 1730
Raleigh, NC 27602

Sen. James E. Ezzell, Jr
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Rocky Mount, NC 27801

Rep. Howard C. Barnhill
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Charlotte, NC 28216

Sen. David R. Parnell
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Parkton, NC 28371

Rep. Ruth Easterling
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LRC Commission Member
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Kenneth T. Levenbook, Counsel
100 Legislative Office Bldg.
Raleigh, NC 27611

Jerry S. Batchelor, Clerk
3055 Granville Drive
Raleigh, NC 27609

 Real Estate Licensing Board v. Aikens

We have reviewed all the assignments of error by both appellants, including those directed to the trial court's charge to the jury. We find no error prejudicial to either appellant.

No error.

Chief Judge BROCK and Judge PARKER concur.

 NORTH CAROLINA REAL ESTATE LICENSING BOARD v. DAVID
 AIKENS, INDIVIDUALLY AND T/A RENTEX

No. 762ISC310

(Filed 6 October 1976)

Brokers and Factors § 8; Constitutional Law § 12— seller of property lists— no real estate broker— constitutionality of statute

The amendment to G.S. 93A-2(a) enacted by Session Law 1975, c. 108 which defines a real estate broker as one who for a fee sells the names of persons or others who have real estate for rental, lease or sale is unconstitutional in that it is repugnant to Art. 1, §§ 1 and 19 of the N. C. Constitution, since it is an arbitrary and irrational exercise of the police power to require a person who sells such lists to obtain a license as a real estate broker after first satisfying the Real Estate Licensing Board that he possesses the required knowledge of mortgages, suretyships, escrow agreements and other real property subjects, none of which are reasonably relevant to his business activity.

Appeal by defendant from *Rousseau, Judge*. Order entered 20 February 1976, Superior Court, FORSYTH County. Heard in the Court of Appeals 26 August 1976.

The plaintiff Board alleged that defendant Aikens was engaging in the business of a real estate broker without a license in violation of G.S. 93A-1 and sought both preliminary and permanent injunctive relief under G.S. 150-31.

The basic facts were not in dispute, and were stipulated by the parties as follows:

"1. That defendant is a resident of Forsyth County, North Carolina, trades as 'Rentex' and owns the Rentex offices at 110 West 5th Street, Winston-Salem, North Carolina.

2. That on October 10, 1975, E. H. Jenkins entered the above offices of Rentex and, in return for \$20.00, pur-

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Real Estate Licensing Board v. Aikens

chased from Rentex an agreement (policy no. 670B) entitling him to see a list of real estate for rent by others, said list belonging to Rentex.

3. That defendant does not currently hold, nor has he ever held, a real estate broker's license or salesman's license issued by the North Carolina Real Estate Licensing Board."

The Board presented an affidavit of Everette H. Jenkins, who was employed by the Board as a field representative. As set forth in the second stipulation of fact, he had purchased for \$20.00 on 10 October 1975 a "policy" from Rentex. In essence the policy provided space for the prospective renter to describe the type of rental property sought, and upon presentation, it entitled the holder for three months from date of purchase to see lists of available rental property at any Rentex office. In addition to the "policy," Mr. Jenkins received two blank "rental listings" forms on which he could copy information from Rentex's master list, such as type of structure, address, phone number of landlord, rent, and whether children or pets were allowed. He also received an index of codes used on the master list, a city map, a questionnaire card, and a change of address card. On that date Mr. Jenkins was given access to eight sheets containing about 147 listings. He returned to the same office on 20 October 1975, received access to eight pages containing about 100-125 listings from which he copied information on four pieces of rental property.

The Board also presented an affidavit of Roy Campbell, an owner of rental property in Winston-Salem. He stated that he had placed an advertisement to rent his property in a Winston-Salem newspaper, that Rentex had contacted him requesting to list his property at no charge, and that he consented.

Plaintiff filed its complaint on 1 December 1975. After hearing, on 20 February 1976, the trial court issued a preliminary injunction ordering defendant "to immediately cease and desist all activities as real estate brokers . . . [including] the practice of selling for a fee lists of names or addresses of others who have real estate for rental, lease, or sale, unless and until such broker's . . . license(s) be issued by the North Carolina Real Estate Licensing Board."

On the same day an order was issued staying the preliminary injunction pending this appeal by defendant.

 Real Estate Licensing Board v. Aikens

Attorney General Edmisten by Associate Attorney James E. Scarbrough.

Charles J. Alexander II for defendant appellant.

CLARK, Judge.

In its complaint plaintiff Board alleges that it seeks injunctive relief under G.S. 150-31. This statute was repealed by Session Laws 1973, c. 1331, s. 1, originally effective 1 July 1975, but extended to 1 February 1976 by Session Laws 1975, c. 69, s. 4. However, the repealing act excepted pending hearings. Session Laws 1973, c. 1331, s. 4. This action was instituted on 1 December 1975. We note that the new Administrative Procedure Act, enacted in part to replace former G.S. Chapt. 150, contains no authority for injunctive relief applicable to the plaintiff Board and other boards who depended upon G.S. 150-31 for such authority.

G.S. Chapt. 93A, entitled "Real Estate Brokers and Salesmen," regulates the real estate business. The Chapter was declared constitutional in *State v. Warren*, 252 N.C. 690, 114 S.E. 2d 660 (1960). "Its purpose is to protect sellers, purchasers, lessors and lessees of real property from fraudulent or incompetent brokers and salesmen. It must be construed with a regard to the evil which it is intended to suppress." *McArver v. Gerukos*, 265 N.C. 413, 416-17, 144 S.E. 2d 277, 280 (1965).

G.S. 93A-2(a) defines a real estate broker as follows:

"Definitions and exceptions.—(a) A real estate broker within the meaning of this Chapter is any person, partnership, association, or corporation who for a compensation or valuable consideration or promise thereof lists or offers to list, sells or offers to sell, buys or offers to buy, auctions or offers to auction (specifically not including a mere crier of sales), or negotiates the purchase or sale or exchange of real estate, or who leases or offers to lease, or who sells or offers to sell leases of whatever character, or rents or offers to rent any real estate or the improvement thereon, for others. A broker shall also be deemed to include a person, partnership, association, or corporation who for a fee sells or offers to sell the name or names of persons, partnerships, associations, or corporations who have real estate for rental, lease, or sale." (Emphasis added.)

The last S. Laws 1975, c. 1 April 1975. This amendme trade or occup Carolina Const

The defere for a modest information abo numbers of th or advises the ing the proper Nevertheless, estate broker

The exerci tion of certain lated to the pa welfare of the 2d 851 (1957 courts of this legislation as *Allen, supra*. 764, 51 S.E. 216 N.C. 746. *Palmer v. Sp* held that dup were purely re practice of op the definition ties which do tion is requir health, safety.

We find *Warren, supra* brokering. The brokering wh (1) the chara ship between for collusion analogous to economic sigt.

Real Estate Licensing Board v. Aikens

The last sentence of subsection (a) was added by Session Laws 1975, c. 108, and became effective upon ratification on 7 April 1975. The defendant questions the constitutionality of this amendment on the ground that it regulates an ordinary trade or occupation contrary to the provisions of the North Carolina Constitution, art. I, secs. 1 and 19.

The defendant's business activity consists only of selling for a modest fee the addresses of property for rent, some information about the features of the properties, and the phone numbers of the lessors. There is no indication that he counsels or advises the customers. He charged the lessor no fee for listing the property. There is no further contact with the customer. Nevertheless, this activity is clearly within the definition of real estate broker set out in the last sentence of G.S. 93A-2(a).

The exercise of the police power of the State in the regulation of certain sectors of the economy must be reasonably related to the protection of the health, morals, safety or general welfare of the public. *Roller v. Allen*, 245 N.C. 516, 96 S.E. 2d 851 (1957). When there is no reasonable relationship, the courts of this State have not hesitated to strike down regulatory legislation as repugnant to the State Constitution. *Roller v. Allen, supra*, (tile contractors); *State v. Ballance*, 229 N.C. 764, 51 S.E. 2d 731 (1949), (photography); *State v. Harris*, 216 N.C. 746, 6 S.E. 2d 854 (1940), (dry cleaning). And in *Palmer v. Smith*, 229 N.C. 612, 51 S.E. 2d 8 (1948), it was held that duplicating ophthalmic lenses and furnishing frames were purely mechanical processes which did not constitute the practice of optometry, and that the legislature could not extend the definition of a trade or occupation to include ordinary activities which do not demand those special skills for which regulation is required nor have a substantial relation to the public health, safety, or welfare.

We find significant to this case the rationale in *State v. Warren, supra*, which held valid the regulation of real estate brokering. There the court noted two aspects of real estate brokering which permitted regulation under the police power: (1) the characteristics of trust and confidence in the relationship between broker and client, which provide opportunities for collusion to extract illicit gains and which make the bond analogous to that between attorney and client; and (2) the economic significance of the real estate business, which was

 Real Estate Licensing Board v. Aikens

similar to that of the banking industry. The court pointed out that mismanagement of either could produce widespread distress and unrest, and that the need for competence in those acting as intermediaries in either field was particularly acute.

The business activity of the defendant in the sale of a list of addresses of property for rent and the telephone numbers of the lessor does not involve a confidential relationship with the customers nor negotiations or other acts as an intermediary. An established and accepted definition of a broker is "one who is engaged for others, on a commission, to *negotiate* contracts relative to property." 12 C.J.S. Brokers, § 1 (1938). (Emphasis added.)

The key word in this and other accepted definitions of a broker is "negotiate." In his business the defendant does not negotiate; he provides information. The definition of a real estate broker in the last sentence of G.S. 93A-2(a) is a sharp and dangerous detour from any established and accepted definition and is so broad as to include the classified ad section of a newspaper and the rental guide of a municipal chamber of commerce.

It is an arbitrary and irrational exercise of the police power to require the defendant to obtain a license as a real estate broker after first satisfying the plaintiff Board that he possessed the required knowledge of mortgages, suretyships, escrow agreements and other real property subjects, none of which is reasonably relevant to his business activity. In *Real Estate Commission of Maryland v. Phares*, 268 Md. 344, 302 A. 2d 1 (1973), the court held that an information service virtually identical to that involved in the case before us did not constitute real estate brokering. Statutory amendments which explicitly defined advertisers and compilers of property information as real estate brokers were held unconstitutional in *United Interchange v. Spellacy*, 144 Conn. 647, 136 A. 2d 801 (1957), and *United Interchange, Inc. v. Harding*, 154 Me. 128, 145 A. 2d 94 (1958).

It is clear that defendant's activities do not fall within those which the legislature may constitutionally regulate as constituting the practice of real estate brokering. The reason for this conclusion is simple but profound. It has been expressed by the courts of this State many times in upholding the rights of a free people to live without undue regulation, but probably nowhere has it found a more eloquent expression than in *State*

v. Ballance, J., wrote the acute aware speaking rad dom for the and were co to respect th to be preser quence, they designed chi N.C. at 768

Two pr tection and the inaliena ment of the ness. Art. I of life, libe fundamenta and simple *State v. W*

For th to G.S. 93A constitution North Caro

Revers

Judge

STATE OF

1. Narcotic purpose-
WH
other is the cour evidence for pos

State v. Lankford

v. Ballance, supra. In an opinion worthy of re-reading, Ervin, J., wrote that the founding fathers of this State "possessed an acute awareness of the long and bitter struggle of the English speaking race for some substantial measure of dignity and freedom for the individual. They loved liberty and loathed tyranny, and were convinced that government itself must be compelled to respect the inherent rights of the individual if freedom is to be preserved and oppression is to be prevented. In consequence, they inserted in the basic law a declaration of rights designed chiefly to protect the individual from the State." 229 N.C. at 768.

Two provisions of our State Constitution contain such protection and are relevant here. Art. I, sec. 1, declares that among the inalienable rights of the people are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness. Art. I, sec. 19 declares that no person shall be deprived of life, liberty, or property but by the law of the land. These fundamental provisions guarantee the right to pursue ordinary and simple occupations free from governmental regulation. *State v. Warren, supra.*

For the reasons set forth, we hold that the amendment to G.S. 93A-2(a) enacted by Session Laws 1975, c. 108, is unconstitutional as repugnant to art. I, secs. 1 and 19 of the North Carolina Constitution.

Reversed and remanded for dismissal of the action.

Judges MORRIS and VAUGHN concur.

STATE OF NORTH CAROLINA v. MITCHELL WAYNE LANKFORD

No. 7630SC314

(Filed 6 October 1976)

1. Narcotics § 4.5; Criminal Law § 95— evidence admissible for restricted purpose — failure to request limiting instruction

When evidence competent for one purpose only and not for another is offered, it is incumbent upon the objecting party to request the court to restrict the consideration of the jury to that aspect of the evidence which is competent; therefore, defendant in this prosecution for possession and sale of marijuana was not entitled to a limiting

L I N C

HISTORY OF HOUSE BILL H1338
RENTAL REFERRAL BLANK BILL
Introduced 5-22 by WOODARD C

Date: 2/ 5/86
Time: 11:00 a.m.
Page: 1 of 1

GS Chapters: 66

<u>Date</u>		<u>Action</u>
5-22	H	REF TO COM ON BUSINESS
7- 2	HF	REPTD UNFAV

Press NEXT SCREEN, PREV SCREEN, EXIT, H(HISTORY) or enter page number:

MINUTES

HOUSE COMMITTEE ON SMALL BUSINESS

June 27, 1985

The House Committee on Small Business met in Room 1328 of the Legislative Building on June 27, 1985 at 8:00 a.m. Representative Charles Woodard, Chairman, presided at the meeting and the following members were present: Bob Etheridge, Murray Pool, Fred Bowman, Robert Brawley, L. M. Brinkley, Ray Fletcher, C. B. Hauser, Larry Justus, Frank Rhodes, Tim Tallent.

The following bills were discussed:

House Bill 1338, "AN ACT TO AMEND THE LAW REGARDING RENTAL REFERRAL AGENCIES". The Chair turned the meeting over to Rep. Brawley. Rep. Woodard offered a new Committee Substitute for House Bill 1338. It was moved and seconded that the committee adopt the committee substitute. The motion carried. Mr. Tom Barringer was introduced to explain the substitute. A copy of the substitute is attached and is a part of the minutes. Mr. Jay McLeod, President of the N. C. Locators, Inc. and Mr. John Maddrey of the Attorney General's office were present to answer questions from the committee. Mrs. Elizabeth Buck with American Connections Agency was recognized. She expressed opposition to the \$20.00 administrative fee being retained by the rental referral agency if the agency does not find appropriate housing for the client. After a lengthy discussion by the committee, Rep. Justus moved that the committee substitute be given a favorable report. The motion was seconded and failed.

Small Business Committee


Rep. Fletcher moved that the bill be given an unfavorable report. The motion was seconded and carried.

House Bill 1141, "AN ACT TO PROHIBIT THE SALE IN VENDING MACHINES OF SOFT DRINKS IN NON-RETURNABLE BOTTLES AND TO REGULATE THE CONSUMPTION AND POSSESSION OF ALCHOLIC BEVERAGES ON CERTAIN STATE LANDS." Rep. Brawley moved that the bill postponed indefinitely. The motion was seconded and carried.

A motion was made, seconded and carried to adjourn at 8:30 a.m.



Charles D. Woodard, Chairman



Susan M. Moore, Comm. Clerk

The following report(s) from standing committee(s) is/are presented:

By Rep. Charles D. Woodard for the Committee on

Small Business

H.B. <u>1338</u> ,	S.B. _____,	<u>X</u>	A BILL TO BE ENTITLED AN ACT
H.J.R. _____,	S.J.R. _____,	_____	A JOINT RESOLUTION
H.R. _____,		_____	A HOUSE RESOLUTION

AN ACT TO AMEND THE LAW REGARDING RENTAL REFERRAL AGENCIES

- With a favorable report.
- With a favorable report and recommendation that the bill be re-referred to the Committee on () Appropriations/() Finance.
- With a favorable report, as amended.
- With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on () Appropriations/ () Finance.
- With an unfavorable report.
- With an unfavorable report as to bill, favorable as to committee substitute bill.
- With recommendation that House concur.
- With recommendation that House do not concur.
- With recommendation that House do not concur; request conferees.
- With recommendation that House concur; committee believes to be material.
- With an unfavorable report, with a Minority Report attached.
- Without prejudice.
- With an indefinite postponement report.
- With an indefinite postponement report, with a Minority Report attached.
- With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

FOR JOURNAL USE ONLY:

On motion of Rep. _____, the bill/resolution is re-referred to the Committee on _____.

The substitute bill/resolution is placed on the Calendar for _____.
The original bill/resolution is placed on the Unfavorable Calendar.

On motion of Rep. _____, the rules are suspended and the bill/resolution is placed on today's Calendar.

On motion of Rep. _____, the rules are suspended and the bill/resolution is placed before the House for immediate consideration.

On motion of Rep. _____, Committee Amendment No(s). _____ is/are adopted.

Rep. _____ offers Amendment No. _____ which _____.

The bill (,as amended,) passes its second reading (by the following vote) (by EV _____), (and remains on the Calendar), (and there being no objection is read a third time.)

The bill (,as amended,) passes its third reading (by EV _____) and is ordered _____ sent to the Senate.

without engrossment. _____ by Special Message.

sent to the Senate for concurrence in House amendment(s).

enrolled.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1985
HOUSE 1338

Short Title: Rental Referral Agency (Public)
Sponsor: Representative C. D. Woodard; Stamey

Referred To:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING RENTAL REFERRAL AGENCIES

The General Assembly of North Carolina enacts:

Section 1. This act amends Article 23 "Rental Referral Agencies" of Chapter 66 "Commerce and Business".

G.S. 66-143 (b)(2) is amended by rewriting this section to read as follows: That the deposit will be refunded within ten (10) days of the prospective tenant's written request, subject to the conditions set forth in G.S. 66-143 (c), that a refund request must be made no sooner than thirty (30) days after the date of the contract and no later than sixty (60) days after the date of the contract, and that an administrative fee of not more than \$20.00 may be deducted by the rental referral agency from the deposit refund;

G.S. 66-143 is amended by adding the following sections:

66-143 (c). A deposit will be refunded minus an administrative fee of not more than \$20.00. If the prospective tenant does not obtain rental housing through the assistance of the agency. The prospective tenant must make a bona fide effort to contact the agency and the owners of the properties or its agents or representatives and view the properties supplied by the agency to be entitled to any deposit refund. Prospective tenants must apply in writing for such refund no sooner than thirty (30) days after the date of the contract and no later than sixty (60) days after the date of the contract. If the prospective tenant does not apply for a refund during such period, the fee shall be deemed earned by the rental referral agency and may be removed from the trust account.

(d) Should the prospective tenant receive information which is unreasonably inaccurate in any material sense or as to the availability of property as defined in G.S. 66-144 (a), the prospective tenant may demand, in writing showing cause, a full refund. Such written demand must be made within ten (10) days of the date of discovery of the inaccurate information and within the period specified in G.S. 66-143 (b)(2).

G.S. 66-145 is amended by inserting after the phrase "as provided in G.S. 66-143 (a)" the phrase "or as otherwise provided herein".

Section 2. This act is effective September 1, 1985.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1985



HOUSE BILL 1338

Short Title: Rental Referral Agency.

(Public)

Sponsors: Representatives C.D. Woodard; Stamey.

Referred to: Small Business.

May 22, 1985

1

A BILL TO BE ENTITLED

2 AN ACT TO AMEND THE LAW REGARDING RENTAL REFERRAL AGENCIES.

3 The General Assembly of North Carolina enacts:

4

Section 1. This act amends Article 23 "Rental Referral

5

Agencies" of Chapter 66 "Commerce and Business".

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Sec. 2. This act is effective upon ratification.

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ARTICLE 23

Rental Referral Agencies

<66-142. Definition.

For the purpose of this Article, a "rental referral agency" is a person or business which offers to assist any person in locating residential rental property in return for any consideration from a prospective tenant. (1981, c. 610, s. 1.)

<66-143. Fees and deposits.

(a) A rental referral agency shall not charge or attempt to collect any fees or other consideration from any prospective tenant except where rental housing is in fact obtained by such person through the assistance of that agency. For the purposes of this Article, such housing is obtained when the prospective tenant has contracted to rent the property.

(b) Deposits to be applied toward fees may be required by a rental referral agency pursuant to a written contract which includes provisions stating:

- (1) The specifications of housing sought by the prospective tenant, including maximum rent, desired lease period, geographic area, number of bedrooms required, number of children to be housed, and number and type of pets;
- (2) That the deposit will be refunded within 10 days of the prospective tenant's request should the specified housing not be obtained through the agency's assistance within 30 days of the date of the contract.
- (3) That the rental referral agency will maintain a trust account or bond in compliance with G.S. 66-145, and identifying the depository institution or bonding company by name and address. (1981, c. 610, s. 1.)

<66-144. Representations of availability.

(a) A rental referral agency shall not make any representation that any property is available for rent unless availability has been verified by the agency within 48 hours prior to the representation. The availability of property described in media advertisements shall be verified within 48 hours prior to the appearance of the advertisement.

(b) Notations of the time and date of verification and the verifier's identity shall be recorded by the agency and made available for inspection by any person from whom the agency has received a deposit or fee. (1981, c. 610, s. 1.)

<66-145. Bond or trust account required.

(a) Every rental referral agency before beginning business shall establish a trust account with a licensed and insured bank or savings institution located in the State of North Carolina.

APPENDIX E
APPLICABLE STATUTES

Each deposit to be applied towards a fee collected under G.S. 66-143(b) shall be placed in the trust account and shall be withdrawn only to refund the deposit to the applicant pursuant to G.S. 66-143(b)(2) or when a fee is earned by the agency as provided in G.S. 66-143(a).

(b) A rental referral agency may elect to post a bond in lieu of the trust account required by this section. The amount of the bond shall at no time be less than the amount that would be required by this section to be held in trust. In no event, however, shall the bond be less than five thousand dollars (\$5,000). The rental referral agency shall file the bond with the clerk of the superior court of the count in which its principal place of business is located.

(c) Any person who is damaged by any violation of this Article, or by any breach by the rental referral agency of its contract, may bring an action for the remedies referred to and provided in G.S. 66-146 against the bond or trust account; provided that the aggregate liability of the surety or trustee shall not exceed the amount of the bond or trust account.

(d) Violation of subsections (a) or (b) of this section shall constitute a misdemeanor. (1981, c. 610, s. 1.)

<66-146. Remedies.

(a) Any person injured by a violation of this Article, or breach of any obligation created by this Article or contract subject thereto, may bring an action for recovery of damages, including reasonable attorneys' fees.

(b) The violation of any provision of this Article shall constitute an unfair act or practice under G.S. 75-1.1.

(c) The remedies provided herein shall be in addition to any other remedies provided by law or equity. (1981, c. 610, s. 1.)

RELATED STATUTES:

<75-1.1. Methods of competition, acts and practices regulated; legislative policy.

(a) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.

(b) For purposes of this section, "commerce" includes all business activities, however denominated, but does not include professional services rendered by a member of a learned profession.

(c) Nothing in this section shall apply to acts done by the publisher, owner, agent, or employee of a newspaper, periodical or radio or television station, or other advertising medium in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement and when the newspaper, periodical or radio or television station, or other

advertising medium did not have a direct financial interest in the sale or distribution of the advertised product or service.

(d) Any party claiming to be exempt from the provisions of this section shall have the burden of proof with respect to such claim. (1969, c. 833; 1977, c. 747, ss. 1, 2.)

<75-6. Violation a misdemeanor; punishment.

Any corporation, either as agent or principal, violating any of the provisions of G.S. 75-5 [Particular acts prohibited.] shall be guilty of a misdemeanor, and such corporation shall upon conviction be fined not less than one thousand dollars (\$1,000) for each and every offense, and any person, whether acting for himself or as officer of any corporation or as agent of any corporation or persons violating any of the provisions of this Chapter, with the exception of G.S. 75-1.1 (the violation of which does not constitute of crime), shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. (1913, c. 41, s. 5; C.S., s. 2564; 1969, c. 833.)

<75-15.2. Civil penalty.

In any suit instituted by the Attorney General, in which the defendant is found to have violated G.S. 75-1.1 and the acts or practices which constituted the violation were, when committed, knowingly violative of a statute, the court may, in its discretion, impose a civil penalty against the defendant of up to five thousand dollars (\$5,000) for each violation. In any action brought by the Attorney General pursuant to this Chapter in which it is shown that an action or practice when committed was specifically prohibited by a court order, the Court may, in its discretion, impose a civil penalty against the defendant of up to five thousand dollars (\$5,000) for each violation. Civil penalties may be imposed in a new action or by motion in an earlier action, whether or not such earlier action has been concluded. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant. Any penalty so assessed shall be paid to the General Fund of the State of North Carolina. (1977, c. 747, s. 3; 1983 c. 721, s. 1.)

<75-16. Civil action by person injured; treble damages.

If any person shall be injured or the business of any person, firm or corporation shall be broken up, destroyed or injured by reason of any act or thing done by any other person, firm or corporation in violation of the provisions of this Chapter, such person, firm or corporation so injured shall have a right of

action on account of such injury done, and if damages are assessed in such case judgment shall be rendered in favor of the plaintiff and against the defendant for treble the amount fixed by the verdict. (1913, c. 41, s. 14; C.S., s. 2574; 1969, c. 833; 1977, c. 707.)

<75-16.1. Attorney fee.

In any suit instituted by a person who alleges that the defendant violated G.S. 75-1.1, the presiding judge may, in his discretion, allow a reasonable attorney fee to the duly licensed attorney representing the prevailing party, such attorney fee to be taxed as a part of the court costs and payable by the losing party, upon a finding by the presiding judge that:

- (1) The party charged with the violation has willfully engaged in the act or practice, and there was an unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such suit; or
- (2) The party instituting the action knew, or should have known, the action was frivolous and malicious. (1973, c. 614, s. 1; 1983, c. 417, s. 2.)

PERSONS MAKING PRESENTATIONS TO THE COMMITTEE

Representative Margaret Stamey

Deputy Attorney General John Maddrey

Mr. J. McLeod
North Carolina Locators

Mr. Marc Issacson, Attorney

Mr. & Mrs. Darryl Buck
American Connections

Mr. Glenn Jernigan, Counsel
Rental Locators of Fayetteville and Wilmington

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



M E M O R A N D U M

FROM: KENNETH T. LEVENBOOK, COMMITTEE COUNSEL
TO: LRC RENTAL REFERRAL AGENCY STUDY COMMITTEE
SUBJECT: RENTAL AGENCY REGULATION IN OTHER STATES
DATE: APRIL 18, 1986

At the request of the Study Committee, after the last meeting, I sent out a survey to the other states to inquire about their regulation, if any, of rental referral agencies. The following results have been received as of this date:

ALABAMA:

The State Real Estate Commission takes the position that the State statutes generally requires persons performing the services of a rental referral agency to have real estate licenses.¹

ALASKA:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.

ARIZONA:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.

¹Code of Alabama, Sec. 34-27-30 provides that a real estate broker's license will be required of persons who:

"(7) aid, attempt, or offer to aid in locating or obtaining for purchase, rent, or lease any real estate;

"(8) procure or assist in procuring of prospects for the purpose of effecting the sale, exchange, lease, or rental of real estate;

"(9) procure or assist in the procuring of properties for the purpose of effecting the sale, exchange, lease, or rental of real estate; or"

ARKANSAS:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.²

CALIFORNIA:

This state regulates prepaid rental listing services.³

COLORADO:

At one time Colorado had a specific statute governing rental referral agencies. That statute was repealed in 1979. In lieu of that statute, Colorado now requires persons offering such services to be qualified as a real estate broker subject to regulations under the state's real estate commission.⁴

CONNECTICUT:

This state regulates apartment listing services.⁵

DELAWARE:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.

FLORIDA:

GEORGIA:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.

HAWAII:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.

²However, under Arkansas Statutes 71-1302, one who "assists or directs in the procuring of prospects calculated to result in the...rental of real estate," falls under the definition of real estate broker or salesman. That person would have to conduct business in accordance with the laws and regulations of the state that apply to real estate brokers and salesmen.

³Article 2.3 of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code governs prepaid rental listing services. A copy of the statute is attached to this memorandum. (See pages A1 - A20)

⁴Colorado Revised Statutes Secs. 12-61-101(2)(J) and 12-61-113(1)(u).

⁵Connecticut General Statutes Section 42-103 regulates these agencies. It is an extensive regulatory statute and a copy is attached to this memorandum. (See pages A21 - A25)

IDAHO:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.

ILLINOIS:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.

INDIANA:

A person operating a rental referral agency would be required to obtain a real estate broker license from the real estate commission. The definition of broker includes a person "who...leases, rents, manages, lists, or appraises real estate or negotiates or offers [to do so]."⁶

IOWA:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.

KANSAS:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.

KENTUCKY:

LOUISIANA:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.

MAINE:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.

⁶Indiana Code Section IC 25-34.1-1-2.

MARYLAND:

This state regulates rental referral agents by including them in the definition of "real estate broker".⁷

MASSACHUSETTS:

In this state only licensed real estate brokers and salesmen are authorized to engage in the business of finding rental property for prospective tenants.⁸

MICHIGAN:

MINNESOTA:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.⁹

⁷Annotated Code of Maryland, Article 56 Section 212(a) provides that a real estate broker is defined as: "...any person, association, copartnership or corporation foreign or domestic, who for another and for a fee, commission or any other valuable consideration sells, purchases, exchanges, leases, rents or collects rent for the use of real estate or who attempts or who offers by verbal solicitation, advertisement or otherwise to perform any such function, or who aids, attempts or offers to aid, for a fee, any person in locating or obtaining for purchase or lease any residential real estate, or who is regularly engaged in the business of dealing and trading in real estate or leases and options thereon, or who engages in the business of charging an advance fee or contacting for collection of a fee in connection with any contract whereby he undertakes primarily to promote the sale of real estate through its listing in a publication issued primarily for such purpose, or for the referral of information concerning such real estate to brokers, or both, or who is engaged in the business of subdividing and selling land in building lots or sites, whether such real estate is located in this state or the District of Columbia."

⁸General Laws of Massachusetts Chapter 112, Sections 87RR and 87DDD 1/2.

⁹State, By Spannaus v. Beslanowitch, 248 N.W.2d 286 (1976) held that while Minnesota Statutes Chapter 82 does not require those who engage only in the business of selling information about residential real estate vacancies to obtain a real estate broker's license, it does require a person to obtain a license before he may attempt to meet the individual needs of a specifically identified landlord or tenant.

MISSISSIPPI:

MISSOURI:

MONTANA:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.

NEBRASKA:

NEVADA:

Nevada regulates real estate brokers and the definition of rental referral agencies comes within this definition.¹⁰

NEW HAMPSHIRE:

This state regulates rental referral agencies.¹¹

NEW JERSEY:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.¹²

NEW MEXICO:

NEW YORK:

NORTH CAROLINA:

This state regulates rental referral agencies and these statutes are the subject of this Legislative Research Commission Study.

¹⁰Nevada Revised Statutes 645.030 defines a real estate broker to include anyone who lists or solicits prospective purchasers, lessees or renter of real property. The Real Estate Division, Nevada Department of Commerce, has taken the position that this definition includes rental referral agencies. NRS 645.260 provides that anyone who attempts or engages in "any single act or transaction contained in the definition of real estate broker in NRS 645.030" is acting as a broker. An exemption for apartment managers is provided in NRS 645.240.

¹¹New Hampshire Revised Statutes Annotated Chapter 358-H is an extensive statute that regulates rental referral agencies. A copy of the statute is attached to this memorandum. (See pages A26 - A29)

¹²However, pursuant to N.J.S.A. 45:15-3, a party who solicits, assists or directs in the procuring of prospects for the leasing, renting or auctioning of real property must be licensed as a real estate broker. Accordingly, the Division of the New Jersey Real Estate Commission in the State Department of Insurance has promulgated regulations which regulate rental referral agencies. (N.J.A.C. 11:5-1.32)

NORTH DAKOTA:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.

OHIO:

This state includes persons or entities that collect rental information for purposes of referring prospective tenants to rental units for a fee are considered real estate brokers or salesmen and regulated by the real estate licensing laws.¹³

OKLAHOMA:

Rental referral agencies are regulated by the Oklahoma Real Estate Commission and all rental referral agents must have brokers licenses.¹⁴

OREGON:

PENNSYLVANIA:

This state regulates rental referral agencies.¹⁵

RHODE ISLAND:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.

SOUTH CAROLINA:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.

¹³Ohio Revised Code, Chapter 4735.

¹⁴Oklahoma Statutes Sec. 858-102 provide that:

"2. The term 'real estate broker' shall include any person, partnership, association, association or corporation, foreign or domestic, who for a fee, commission or other valuable consideration, or who with the intention or expectation of receiving or collecting a fee, commission or other valuable consideration, lists, ..or solicits listings of places to rent, or solicits for prospective tenants, or who advertises or holds himself out as engaged in such activities."

¹⁵Pennsylvania Consolidated Statutes Title 49 Secs. 35.171 through 35.176. A copy of these statutes is attached to this memorandum. (See pages A30 - A35)

SOUTH DAKOTA:

TENNESSEE:

This state regulates rental location agents.¹⁶

TEXAS:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.

UTAH:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.

VERMONT:

VIRGINIA:

Rental location agents are required to register with the Real Estate Board.¹⁷

WASHINGTON:

WEST VIRGINIA:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.

WISCONSIN:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.

WYOMING:

This state does not regulate rental referral agencies and there are no proposals for regulation pending in the legislature.

¹⁶Tennessee Code Annotated Secs. 62-25-101 through 62-25-107. A copy of these statutes are attached to this memorandum. (See pages A36 - A40)

¹⁷Code of Virginia Sec. 54-731.1 provides that:
"A rental location agent within the meaning of this chapter is any individual who furnishes or offers to furnish rental information to prospective tenants, assists or attempts to assist or offers to assist any person or persons to rent or lease or attempt to rent or lease real property owned by another whereby the prospective tenant is obligated to pay a fee whether or not a rental is obtained through such services; or who solicits or obtains rental listings from landlords or managers in expectation of compensation by including them in information offered prospective tenants. A rental location agent must register with the Virginia Real Estate Board. A rental location agent may not negotiate leases or offer to sell or offer information on property for sale or options on such property."

JACK I. HORTON
ANN MACKEY
CHIEF DEPUTIES

JAMES L. ASHFORD
JERRY L. BASSETT
STANLEY M. LOURIMORE
EDWARD K. PURCELL
JOHN T. STUDEBAKER

DAVID D. ALVES
JOHN A. CORZINE
C. DAVID DICKERSON
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BION M. GREGORY

Sacramento, California

March 14, 1986

Mr. Kenneth T. Levenbook
Committee Counsel
Legislative Research Commission
Legislative Office Building, Suite 100
Raleigh, NC 27611

Prepaid Rental Listing Services - #5820

Dear Mr. Levenbook:

Pursuant to your request regarding the regulation of rental referral agencies, we have enclosed a copy of Article 2.3 (commencing with Section 10167) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code governing prepaid rental listing services.

Very truly yours,

Bion M. Gregory
Legislative Counsel



By
Clinton J. deWitt
Deputy Legislative Counsel

CdeW:jm

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Article 2.3. Prepaid Rental Listing Service
(Article 2.3 added by Stats. 1980, Ch. 1051, Sec. 2.
Effective September 26, 1980)

10167. The definitions used in this section shall govern the construction and terms as used in this article:

(a) "Prepaid rental listing service" means the business of supplying prospective tenants with listings of residential real properties for tenancy, by publication or otherwise, pursuant to an arrangement under which the prospective tenants are required to pay a fee in advance of, or contemporaneously with, the supplying of the listings, but which does not otherwise involve the negotiation of rentals by the person conducting the service.

(b) "Licensee" means a person licensed to conduct a prepaid rental listing service or a person engaged in the business of a prepaid rental listing service under a real estate broker license.

(c) "Location" means the place, other than the main or branch office of a real estate broker, where a

prepaid rental listing service business is conducted.

(d) "Designated agent" means the person who is in charge of the business of a prepaid rental listing service at a given location.

(Added by Stats. 1980, Ch. 1051, Sec. 2.
Effective September 26, 1980.)

10167.1. This article shall not apply to a newspaper of general circulation.

(Added by Stats. 1980, Ch. 1051, Sec. 2.
Effective September 26, 1980.)

10167.2. It is unlawful for any person to engage in the business of a prepaid rental listing service unless licensed in that capacity or unless licensed as a real estate broker.

(Added by Stats. 1980, Ch. 1051, Sec. 2.
Effective September 26, 1980. Operative December 25, 1980,
by Sec. 4 of chapter.)

10167.3. (a) A separate application for a license as a prepaid rental listing service shall be made in writing for each location to be operated by a licensee other than a real estate broker. Each such application shall be on forms provided by the department, shall be signed by the applicant, and shall be accompanied by a one hundred dollar (\$100) application fee for the first

location, and a twenty-five dollar (\$25) application fee for each additional location of the applicant.

Applications to add or eliminate locations during the term of a license shall be on forms prescribed by the department. A twenty-five dollar (\$25) application fee for the remainder of a license term for each location to be added shall accompany the application.

(b) A real estate broker may provide a prepaid rental listing service at a licensed office for the conduct of his or her real estate brokerage business if the business at the office is conducted under the immediate supervision of the broker or of a real estate salesperson licensed to, and acting on behalf of, the broker.

(Added by Stats. 1980, Ch. 1051, Sec. 2.
Effective September 26, 1980.)

10167.4. The commissioner may require such proof as he may deem advisable concerning the honesty and truthfulness of any applicant for a license as a prepaid rental listing service, or of the officers, directors, and persons owning 25 percent or more of the shares of any corporation making such application, before authorizing the issuance of a license for a location. For this purpose, the commissioner may hold a hearing in accordance

A4

with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and may refuse to issue a license to an applicant who does not furnish satisfactory proof of his or her honesty and truthfulness or of the honesty and truthfulness of the corporate officers, directors and shareholders. To assist in his determination, the commissioner shall require the fingerprinting of every original applicant including officers, directors, and persons owning 25 percent or more of the shares of the corporate applicant.

(Added by Stats. 1980, Ch. 1051, Sec. 2.
Effective September 26, 1980.)

10167.5. The business at a location licensed pursuant to subdivision (a) of Section 10167.3 shall be conducted under the immediate supervision of the licensee or a designated agent who is not a designated agent at any other location. Whenever a designated agent ceases permanently to be a designated agent at any location because of death, termination of employment, or any other reason, the licensee, within five days thereafter, shall give written notice to the department. A license issued for a particular location shall automatically expire 60 days after the time the business conducted at such

A5

location ceases for any reason to be under the charge of and managed by the designated agent of record with the department, unless within such 60-day period the licensee submits written notice of the new designated agent to the department.

A designated agent of the licensed service may serve as designated agent for the location in question as well as for the location for which he or she is the designated agent of record during the period of 60 days.

(Added by Stats. 1980, Ch. 1051, Sec. 2.
Effective September 26, 1980.)

10167.6. Every applicant for a prepaid rental listing service license who is not a resident of this state shall file with the application for a license an irrevocable consent that in any action arising out of the activities of the prepaid rental listing service commenced against him or her in this state, if personal service of process upon him or her cannot be made in this state in the exercise of due diligence, a valid service may be made upon him or her by delivering the process to the Secretary of State.

Insofar as possible, the provisions of Section 1018 of the Code of Civil Procedure relating to service of process on the Secretary of State are applicable to this

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section.

(Added by Stats. 1980, Ch. 1051, Sec. 2.

Effective September 26, 1980.)

10167.7. Except as provided in Section 10167.8, each licensee shall provide to the department, and at all times maintain in force, a bond in the amount of two thousand five hundred dollars (\$2,500) for each location. The bond may be in the form of a corporate surety bond, or a cash deposit. A cash deposit may be deposited by the licensee in an interest-bearing account assigned to the commissioner, with interest earned thereon payable to the licensee. The bond or cash deposit may be utilized by the commissioner for the benefit of any unsatisfied judgment creditor in an action pursuant to subdivision (f) of Section 10167.10.

(Amended by Stats. 1982, Ch. 466, Sec. 3.)

10167.8. The requirement of Section 10167.7 shall not apply to any prepaid rental listing service operated by: (a) a person exempt from the payment of federal and state income taxes; (b) an agency of the federal, state, or local government; or (c) a real estate broker conducting a prepaid rental listing service pursuant to a real estate license.

(Added by Stats. 1980, Ch. 1051, Sec. 2.

A7

Effective September 26, 1980.)

10167.9. (a) Prior to the acceptance of a fee from a prospective tenant, a licensee shall provide the prospective tenant with a written contract which shall include at least the following:

(1) The name of the licensee and the addresses and telephone numbers of the principal office or location of the licensee and of the location, or branch office of a real estate broker, providing the listing to the prospective tenant.

(2) Acknowledgment of receipt of the fee, including the amount.

(3) A description of the service to be performed by the licensee, including significant conditions, restrictions, and limitations where applicable.

(4) The prospective tenant's specifications for the rental property, including, but not limited to:

(A) Type of structure, including, but not limited to, detached single-family home, apartment, or duplex.

(B) Location by commonly accepted residential area name, by designation of boundary streets, or by any other manner affording a reasonable means of identifying locations acceptable to the prospective tenant.

A8

RECORD # 260 BF:

BPC 010167 PAGE NO. 8

(C) Furnished or unfurnished.

(D) Number of bedrooms required.

(E) Maximum acceptable monthly rental.

(5) The contract expiration date, which shall not be later than 90 days from the date of execution of the contract.

(6) A clause setting forth the right to a full or partial refund of the fee paid in advance as provided in Section 10167.10.

(7) The signature of the licensee or of the designated agent, real estate salesperson, or employee acting on behalf of the licensee.

(8) A clause in bold type letters outlining the small claims court remedy available to the prospective tenant.

(b) The original of each such contract shall be retained by the licensee for a period of not less than six months from the date of termination of the contract during which time the contract shall be subject to examination by a duly authorized representative of the commissioner.

(c) The form of contract proposed to be used by a licensee to effect compliance with this section shall be filed with the department prior to use. Any modification of a form previously filed with the department, including

A9

a change in the name or business address of the licensee, shall also be filed prior to use. The department shall withhold the issuance or renewal of a license until the department has approved the contract.

(d) If a prospective tenant first contacts the licensee by telephone from a distance of more than 50 miles from the nearest office of the service, the licensee shall not be in violation of this section by taking credit card information from the prospective tenant by telephone for the purpose of charging the credit card account of the prospective tenant for the fee, if the licensee furnishes the information specified in subdivision (a) during the same telephone conversation and mails written confirmation and a list of available rental properties to the prospective tenant no later than the next business day.

(Amended by Stats. 1984, Ch. 587, Sec. 1.)

10167.10. (a) (1) A licensee, other than a real estate broker, shall refund in full the advance fee paid by a prospective tenant if the licensee does not, within five days after execution of the contract, supply at least three rental properties then available to the prospective tenant and meeting the specifications of the contract.

(2) A licensee will be deemed to have supplied information meeting the specifications of the prospective

A10

tenant if the information supplied meets the contract specifications with reference to: (i) type of structure; (ii) designated area; (iii) furnished or unfurnished; (iv) number of bedrooms; (v) maximum rental; and (vi) any other specification expressly set forth in the contract. A demand for the return of the fee shall be made by or on behalf of the prospective tenant within 10 days following the expiration of the five-day period referred to above by delivery or by mailing by registered or certified mail to the address of a location, or branch office of a real estate broker, set forth in the contract.

(b) A licensee shall refund any amount over and above the sum of a twenty-five dollar (\$25) service charge to the prospective tenant if the prospective tenant obtains a rental other than through the services of the licensee during the term of the contract or does not obtain a rental, provided that the prospective tenant demands a return of that part of the fee within 10 days after the expiration of the contract. Within 10 days of receipt of such a demand by the prospective tenant, the licensee shall refund any amount over and above the sum of a twenty-five dollar (\$25) service charge to the prospective tenant.

(c) Each contract, other than a contract

All

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BPC 010167 PAGE NO. 11

employed by a licensee who is a real estate broker, shall contain provisions which shall read as follows unless different language shall have been approved in writing by the department prior to use:

A12

RIGHT TO REFUND

(Full caps, bold face or italicize)

"If, within five days after payment of an advance fee, the licensee has not supplied the prospective tenant with at least three available rental properties meeting the specifications of the contract as to (i) type of structure; (ii) designated area; (iii) furnished or unfurnished; (iv) number of bedrooms; (v) maximum rental; and (vi) any other specification expressly set forth in the contract, the full amount of the fee paid shall be refunded to the prospective tenant upon presentation of evidence of such failure within 10 days after the expiration of the five-day period.

"If the prospective tenant obtains a rental other than through the services of the licensee during the term of this contract or if the prospective tenant does not obtain a rental through the services of the licensee during the term of the contract, the licensee shall refund the fee received in excess of a twenty-five dollar (\$25) service charge to the prospective tenant within 10 days after receipt by the licensee of the demand for refund.

To be entitled to a refund in excess of the service charge, the prospective tenant must mail or deliver the demand for refund not later than 10 days after expiration of this contract."

A13

RECORD # 360 BF:

BPC 010167 PAGE NO. 13

(d) Each contract employed by a real estate broker shall contain provisions which shall read as follows, unless different language shall have been approved in writing by the department prior to its use:

A14

RECORD # 390 BF:

BPC 010167 PAGE NO. 14

RIGHT TO REFUND

(Full caps, bold face or italicize)

"If the prospective tenant obtains a rental other than through the services of the licensee during the term of this contract or if the prospective tenant does not obtain a rental through the services of the licensee during the term of the contract, the licensee shall refund the fee received in excess of a twenty-five dollar (\$25) service charge to the prospective tenant within 10 days after receipt by the licensee of the demand for refund.

To be entitled to a refund in excess of the service charge, the prospective tenant must mail or deliver the demand for refund not later than ten days after expiration of this contract."

A15

(e) This section shall not apply to a person purchasing rental information for a purpose other than that of locating a rental unit for personal use or the use of a designated person. The contract shall so provide and shall be initialed by the customer.

(f) If the licensee fails to make a refund as provided in this section and if the denial or delay in making the refund is found to have been done in bad faith, a court of appropriate jurisdiction, including a small claims court, shall be empowered to award damages to the plaintiff in an amount not to exceed five hundred dollars (\$500) in addition to actual damages sustained by the plaintiff. If the licensee refuses or is unable to pay the damages awarded by the court, the award may be satisfied out of the security required under Section 10167.7.

(Amended by Stats. 1984, Ch. 587, Sec. 2.)

10167.11. It shall be a violation of this article for any licensee or any employee or agent of a licensee to do the following:

(a) Make, or cause to be made, any false, misleading, or deceptive advertisements or representations concerning the services that the licensee will provide to

A16

prospective tenants.

(b) Refer a property to a prospective tenant knowing or having reason to know that:

(1) The property does not exist or is unavailable for tenancy.

(2) The property has been described or advertised by or on behalf of the licensee in a false, misleading, or deceptive manner.

(3) The licensee has not confirmed the availability of the property for tenancy during the four-day period immediately preceding dissemination of the listing information. However, it shall not be a violation to refer a property to a prospective tenant during a period of from five to seven days after the most recent confirmation of the availability of the property for rental if the licensee has made a good faith effort to confirm availability within the stated four-day period, and if the most recent date of confirmation of availability is set forth in the referral.

(4) The licensee has not obtained written or oral permission to list the property from the property owner, manager, or other authorized agent.

(Amended by Stats. 1983, Ch. 862, Sec. 2.)

10167.12. (a) The commissioner may suspend or

A17

revoke the license of a prepaid rental listing service or the license of the service to operate at one or more locations for either of the following:

(1) A violation of a provision of this article by a licensee or by an employee or agent, including a designated agent, of the licensee.

(2) A conviction of a licensee, or of an officer, director or owner of 25 percent or more of the shares of a corporate licensee for a crime which is substantially related to the qualifications, functions, or duties of a prepaid rental listing service licensee.

(b) For the purpose of determining whether grounds exist for suspending or revoking the license of a prepaid rental listing service the commissioner shall hold a hearing in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(Added by Stats. 1980, Ch. 1051, Sec. 2.
Effective September 26, 1980.)

10167.13. A prepaid rental listing service license issued by the department shall be for a period of two years. An application and fee for renewal filed with the department before midnight of the last day of the period for which a previous license was issued entitles

A18

the licensee to continue operating at all locations specified in the previous license for which a renewal fee is paid.

(Added by Stats. 1980, Ch. 1051, Sec. 2.

Effective September 26, 1980.)

10167.14. Whenever any person has engaged or threatens to engage in any acts or practices which constitute, or will constitute a violation of a provision of the article, the superior court of the county in which the acts or practices have taken place, or are about to take place, on complaint of the commissioner, the attorney general, district attorney, or city attorney, may enjoin such acts or practices by appropriate order. The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that no undertaking shall be required.

(Added by Stats. 1980, Ch. 1051, Sec. 2.

Effective September 26, 1980.)

10167.15. Any person, including an officer, director, or employee of a corporation who willfully violates any provision of this article is guilty of a misdemeanor.

(Added by Stats. 1980, Ch. 1051, Sec. 2.

Effective September 26, 1980.)

10167.16. A person or corporation licensed pursuant to this article and not engaging in acts for which a real estate license is required under Article 1 (commencing with Section 10130) of Chapter 3 of Part 1 of Division 4, shall be subject, in addition to the provisions of this article, to the provisions of Chapter 1 (commencing with Section 10000) and Chapter 2 (commencing with Section 10050) of Part 1 of Division 4, and to Sections 10450, 10452, 10453, and 10454.

(Added by Stats. 1980, Ch. 1051, Sec. 2.

Effective September 26, 1980.)

Connecticut General Assembly



JOINT COMMITTEE ON LEGISLATIVE MANAGEMENT
OFFICE OF LEGISLATIVE RESEARCH

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ALLAN GREEN
DIRECTOR

March 20, 1986

Kenneth T. Levenbook
Committee Counsel
Legislative Research Commission
Suite 100
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Raleigh, NC 27611

Dear Mr. Levenbook:

In response to your request for information regarding the regulation of rental referral agencies, we have enclosed copies of:

1. Connecticut General Statutes Section 42-103, regarding Apartment Listing Services.
2. CGS Sections 20-311-329bb, as amended by 1985 Public Acts numbered 41, 109, 124, 166, and 454, concerning the regulation of Real Estate Brokers and Salesmen.

Please contact us if we can be of further assistance.

Sincerely,

Kate MaKuen

Kate E. MaKuen,
Research Fellow

KEM:pa
Enclosures

A21

CHAPTER 734

BULK SALES

Secs. 42-101 to 42-103. Bulk sales. Sections 42-101 to 42-103, inclusive, are repealed.

(1949 Rev., S. 6705-6707; 1959, P.A. 133, S. 10-107.)

See title 42a, article 6.

CHAPTER 734a

REGULATION OF APARTMENT LISTING SERVICES

Sec. 42-103a. Apartment listing services to give receipt; refund provision. Violation. Enforcement. Section 42-103a is repealed.

(P.A. 79-473, S. 1-3; P. A. 81-166, S. 12.)

Sec. 42-103b. Definitions. As used in this chapter:

(1) "Apartment" means any house or building or portion of a house or building which is rented, leased or hired out to be occupied as a home or residence by one or more persons;

(2) "Apartment listing service" means any person who, in exchange for a fee, permits a customer to inspect or otherwise utilize a listing of apartments for rent;

(3) "Listing" means any oral or written communication concerning a specific apartment for rent;

(4) "Customer" means any person who pays a fee to an apartment listing service for assistance in obtaining an apartment rental; and

(5) "Person" means any individual, association, partnership or corporation.

(P.A. 81-166, S. 1; P.A. 82-146, S. 1.)

History: P.A. 82-146 added a definition of "person" in Subdiv. (5) and eliminated employees and agents from the definition of "apartment listing service".

Sec. 42-103c. Registration. Application, fee and surety bond. Refusal to issue, revocation and suspension. Notice and hearing. Enforcement. (a) No person may engage in business as an apartment listing service without first obtaining a certificate of registration from the commissioner of consumer protection, except that a person holding a valid real estate broker's license in this state shall not be required to obtain a certificate.

(b) Any person seeking a certificate of registration shall apply to the commissioner in writing, on a form provided by the commissioner. Such person may file one application on behalf of all of its employees, members, officers, agents and partners, provided the names of all such persons are listed on the application. Such application shall include the applicant's name, residence address, business address, employees' names and residence

A22

immediately upon buyer's written demand and stated that
an payment for retailing and storage expenses rather than
applicable where holder obtains a prejudgment remedy and
and P.A. 78-303 placed state police within the department

necessary 150 C. 631.
ned 31 CS 152
salment contract who repossessed automobile need not be
4 Conn. Cir. Ct. 351. Applicable only to retail buyers. 6

to consummate sale other than to place in its own file a
as not entitled to recover any deficiency. 23 CS 362.
ed in computing the fifteen days for redemption. 2 Conn.
ated his right to deficiency judgment. Id.

wilful violations. A wilful violation of
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corporation, partnership, limited
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l, in addition to the penalty prescribed
ve dollars nor more than five hundred
a violation by a licensed motor vehicle
all apply.

disclosures.

s. The banking commissioner may
on to enjoin any person from violating

addresses and such other information as the commissioner may by regulation require. No such application may be approved unless it is accompanied by a fee of one hundred dollars for registration and a surety bond in which the applicant shall be the principal obligor in the sum of ten thousand dollars, with one or more sureties satisfactory to the commissioner. The bond shall run to the department of consumer protection for the use of the state and to any person who may have a cause of action against the obligor of the bond for any malfeasance or misfeasance in the conduct of the apartment listing service. An applicant may file a consolidated bond on behalf of all of its employees, members, officers, agents and partners.

(c) Each registration shall be valid for a period of one year or a part thereof and shall expire on December thirty-first of each year and may be renewed for additional one-year periods on or before January first of the next and each following year upon written application under oath in the form prescribed by the commissioner and containing such information as he may require and the filing of the bond prescribed in subsection (b).

(d) Upon receipt of a completed application and surety bond, the commissioner shall: (1) Issue and deliver to the applicant a certificate to engage in the business of an apartment listing service; or (2) refuse to issue the certificate for conduct of a character likely to mislead, deceive or defraud the public or the commissioner or violation of any of the provisions of this chapter or any regulation established pursuant to any of such provisions.

(e) Upon refusal to issue a certificate, the commissioner shall notify the applicant of the denial and of his right to request a hearing within ten days from the date of receipt of the notice of denial. In the event the applicant requests a hearing within such ten days, the commissioner shall give notice of the grounds for his refusal and shall conduct a hearing concerning such refusal in accordance with the provisions of chapter 54 concerning contested matters.

(f) The commissioner may revoke, suspend or refuse to renew any certificate of registration as an apartment listing service for: (1) Conduct of a character likely to mislead, deceive or defraud the public or the commissioner; or (2) violation of any of the provisions of this chapter or this section or any regulation established pursuant to any of such provisions. No such revocation, suspension or refusal to renew shall be ordered by the commissioner except upon notice and hearing in accordance with chapter 54.

(g) The attorney general, at the request of the commissioner, is authorized to apply in the name of the state of Connecticut to the superior court for the judicial district of Hartford-New Britain for an order temporarily or permanently restraining and enjoining any person from acting as an apartment listing service without first obtaining a certificate of registration from the commissioner.

(P.A. 82-146, S. 2; P.A. 83-500.)

History: P.A. 83-500 amended Subsec. (b) by requiring applicants for a certificate of registration to pay a one-hundred dollar filing fee and removed the commissioner's discretionary power to fix the amount of bond at less than ten thousand dollars.

Sec. 42-103d. Apartment listing services to deliver contract. Contents of contract. Notice required. No apartment listing service shall collect a fee prior to the delivery of a contract to the customer. Such contract shall state the name and address of the customer and the customer's specifications with respect to the kind of apartment

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sought including, but not limited to: (1) The town and the portion of the town required
by the customer; (2) the number of rooms; (3) the number of bedrooms; (4) the
maximum rent to be paid; (5) whether children are permitted; (6) whether pets are
permitted; (7) whether elevator service is required; and (8) the desired date of
occupancy. The contract shall also contain a conspicuous statement in ten-point boldface
type as follows:

NOTICE TO CUSTOMER

WE ARE AN APARTMENT LISTING SERVICE ONLY. WE ARE NOT ACTING
AS LICENSED REAL ESTATE BROKERS OR SALESMEN. WE DO NOT
GUARANTEE THAT YOU WILL OBTAIN A RENTAL THROUGH OUR
SERVICES. OUR ONLY PURPOSE IS TO FURNISH YOU WITH LISTINGS OF
AVAILABLE APARTMENTS WHICH MEET YOUR SPECIFICATIONS.

IF YOU DO NOT OBTAIN AN APARTMENT RENTAL THROUGH A LISTING
FURNISHED BY US TO YOU, AT THE EXPIRATION OF THIS CONTRACT WE
SHALL REFUND TO YOU ALL MONEYS IN EXCESS OF THIRTY DOLLARS
PAID BY YOU TO US IF YOU PROVIDE US WITH A WRITTEN REQUEST FOR A
REFUND PREFERABLY BY CERTIFIED MAIL. YOU MUST MAKE THE
REQUEST NOT LATER THAN NINETY DAYS AFTER THE CONTRACT
EXPIRES, UNLESS THE CONTRACT PROVIDES FOR A LONGER PERIOD OF
TIME.

(P.A. 81-166, S. 2.)

Sec. 42-103e. Contents of listing. Each listing given to a customer by an apartment
listing service shall include the following information: (1) The address of the apartment;
(2) the number of rooms; (3) the number of bedrooms; (4) the monthly rental; (5)
which, if any, utilities are included in the rental; (6) whether children are permitted; (7)
whether pets are permitted; (8) the floor location; (9) the availability of elevator service;
(10) the date the apartment is available for occupancy; and (11) the date the availability
of the apartment was last verified by the apartment listing service.

(P.A. 81-166, S. 3.)

Sec. 42-103f. Prerequisites to issuance of listing. No apartment listing service
shall give a listing to a customer unless (1) the apartment listing service has verified the
availability of the apartment which is the subject of the listing within the preceding
seventy-two hours, (2) the listing meets the specifications of the customer as set forth in
the contract and (3) the apartment listing service has been authorized by the owner of
such apartment or by his authorized agent to give the listing to customers.

(P.A. 81-166, S. 4.)

Sec. 42-103g. Refund requirement. An apartment listing service shall, upon
written request, refund to a customer all moneys paid by him in excess of thirty dollars
if he has not, at the expiration of the contract, rented an apartment through a listing
furnished by such apartment listing service. Payment of any refund shall be made within
fifteen days following the date of receipt of such request or the expiration of the contract,
whichever is later.

(P.A. 81-166, S. 5.)

A24

Sec. 42-103h. Apartment listing service to retain copies of documents. Each apartment listing service shall retain at its place of business duplicate copies of all contracts, receipts, requests for refunds and listings furnished to customers for a period of three years.

(P.A. 81-166, S. 6.)

Sec. 42-103i. Written authorizations to be obtained before advertising availability. No apartment listing service shall advertise the availability of a specific apartment for rent without first obtaining the written authorization of the owner of such apartment or his authorized agent. All such written authorizations shall be retained at the place of business of the apartment listing service for a period of three years.

(P.A. 81-166, S. 7.)

Sec. 42-103j. Prohibited acts. No apartment listing service shall: (1) Advertise the availability of a specific apartment for rent without having verified the availability of such apartment within twenty-four hours of the deadline time for submission of such advertisement for publication or dissemination; (2) falsely represent that it has listings meeting certain specifications; (3) deny any knowledge of whether or not it has listings meeting certain specifications if the apartment listing service knows that it has no such listings; or (4) use an apartment listing service contract having a duration of more than sixty days.

(P.A. 81-166, S. 8.)

Sec. 42-103k. Violation of chapter deemed unfair or deceptive trade practice. A violation of any of the provisions of this chapter shall be deemed an unfair or deceptive trade practice under subsection (a) of section 42-110b.

(P.A. 81-166, S. 9; P.A. 82-146, S. 3.)

History: P.A. 82-146 made technical correction.

Sec. 42-103l. Regulations. The commissioner of consumer protection shall adopt regulations in accordance with chapter 54 to carry out the provisions of this chapter.

(P.A. 81-166, S. 10.)

Sec. 42-103m. Powers of commissioner. The commissioner of consumer protection shall have all of the powers and remedies conferred upon him under chapter 735a for the administration and enforcement of this chapter.

(P.A. 81-166, S. 11.)

Secs. 42-103n to 42-103v. Reserved for future use.

CHAPTER 734b*

TIME-SHARING PLANS

*See chapter 828 (Sec. 47-200 et seq.) for Common Interest Ownership Act.

Sec. 42-103w. Application of chapter. The provisions of sections 42-103w to

A25

NEW HAMPSHIRE

CHAPTER 358-H

REGULATION OF RENTAL REFERRAL AGENCIES

358-H: 1	Definitions.	358-H: 5	Remedies.
358-H: 2	Fees and Deposits.	358-H: 6	Waiver of Provisions.
358-H: 3	Contract Requirements.	358-H: 7	Applicability.
358 H: 4	Representations of Availability and Consent of Lessor.	358-H: 8	Surety Bond.

CROSS REFERENCES

Housing discrimination generally, see RSA 354-A: 8.

Regulation of business practices for consumer protection generally, see RSA 358-A.

358-H: 1 Definitions. As used in this chapter, the following terms shall have the following meanings:

I. "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association, or any other legal entity.

II. "Prospective tenant" means any person who pays a fee or other consideration to a rental referral agency for assistance in obtaining information about specific rental properties.

III. "Rental property" means any house or building or portion of a house or building which is rented, leased or hired out to be occupied as a home or residence by one or more persons.

~~IV. "Rental referral agency" means any person who collects rental information for the purpose of assisting prospective tenants in locating specific rental properties in exchange for a fee or other consideration. It shall include, but not be limited to, businesses referred to by such terms as rental information service, apartment locator service, or apartment listing service. It shall not include businesses in which all agency employees and representatives who assist prospective tenants are licensed real estate salesmen or brokers, or are under the direct supervision of such salesmen or brokers, pursuant to RSA 331-A.~~

HISTORY

Source. 1983, 438: 1, eff. June 24, 1983.

358-H: 2 Fees and Deposits. No rental referral agency shall charge or attempt to collect any fee or other consideration from any prospective tenant in excess of \$10 except where rental property is in fact obtained by such prospective tenant through the assistance of that agency. For the purposes of this section, such rental property is obtained when the prospective tenant has contracted to rent the property.

HISTORY

Source. 1983, 438: 1, eff. June 24, 1983.

358-H: 3 Contract Requirements.

1. No rental referral agency shall charge or attempt to collect any fee or other consideration from any prospective tenant except pursuant to a

*See 1985 Supplement
(attached)*

written contract which shall be delivered to the prospective tenant at the time the contract is signed. Every contract must constitute the entire agreement between the parties, shall be dated, and shall be signed by the prospective tenant.

II. Every written contract between a rental referral agency and a prospective tenant shall further include provisions stating:

(a) The specifications of rental property sought by the prospective tenant, including maximum rent, desired lease period, geographic area, number of bedrooms required, number of occupants to be housed, and number and type of pets.

(b) That any deposit in excess of \$10 shall be repaid or refunded to the prospective tenant, upon demand, should the specified rental property not be obtained through the agency's assistance within 30 days of the contract.

(c) That the full deposit or fee shall be repaid or refunded to the prospective tenant if the information concerning rental properties is not accurate or current as required by RSA 358-H: 4, I.

(d) That the rental referral agency will maintain a surety bond in compliance with RSA 358-H: 8 and identifying the bonding company.

(e) The manner in which the rental property information has been collected and the form in which it will be furnished to the prospective tenant.

(f) The name, address, and telephone number of the person to whom complaints and requests for refunds should be directed.

HISTORY

Source. 1983, 438: 1, eff. June 24, 1983.

358-H: 4 Representations of Availability and Consent of Lessor.

I. A rental referral agency shall not make any representation that any rental property is available for rent unless availability has been verified by the agency through contact with the lessor within 48 hours prior to the representation. The availability of rental property described in media advertisements shall be verified within 48 hours prior to the appearance of the advertisement and written evidence of such action shall be made available to prospective tenants upon request.

II. Notations of the time and date of verification and the verifier's identity shall be recorded by the agency and made available for inspection by a person from whom the agency has received a deposit or a fee.

III. A rental referral agency shall not refer a prospective tenant to any rental property without the consent of the lessor.

HISTORY

Source. 1983, 438: 1, eff. June 24, 1983.

358-H: 5 Remedies.

I. Any violation of the provisions of this chapter is an unfair or decep-

tive act or practice within the meaning of RSA 358-A:2. Any right, remedy, or power set forth in RSA 358-A, including those set forth in RSA 358-A: 4, II, may be used to enforce the provisions of this chapter.

II. The rights, obligations, and remedies provided in this chapter shall be in addition to any other rights, obligations, or remedies provided for by law or in equity.

HISTORY

Source. 1983, 438: 1, eff. June 24, 1983.

CROSS REFERENCES

Action on surety bond, see RSA 358-H: 8.

358-H: 6 Waiver of Provisions. Any waiver of the prospective tenant of the provisions of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

HISTORY

Source. 1983, 438: 1, eff. June 24, 1983.

358-H: 7 Applicability. The provisions of this chapter shall apply to all rental referral agencies doing business in this state and to all contracts entered into on or after June 24, 1983.

HISTORY

Source. 1983, 438: 1, eff. June 24, 1983. tive date of this chapter" for purposes

Revision note. At the end of the section, of clarity.
substituted "June 24, 1983" for "the effec-

358-H: 8 Surety Bond. A rental referral agency shall post a surety bond of not less than \$20,000 with the consumer protection and antitrust division of the office of the attorney general. The type of surety bond shall be designated by the consumer protection division. No bond shall be accepted for filing unless it is with a surety company authorized to do business in this state. The surety may cancel the bond at any time upon giving 30 days' written notice to the consumer protection and antitrust division. Any person who is damaged by any violation of this chapter, or by the rental referral agency's breach of the contract subject thereto, may bring an action against the bond to recover damages suffered and any other amounts allowable by law. The attorney general, in an action brought under this chapter or any other applicable provision of law, may likewise proceed against the bond. In no event shall the aggregate liability of the surety for all claims exceed the bond amount.

HISTORY

Source. 1983, 438: 1, eff. June 24, 1983.

CROSS REFERENCES

Remedies generally, see RSA 358-II: 5.

SIDERATION, WHICHEVER OCCURS FIRST. A COPY OF THIS DISCLOSURE STATEMENT, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE DISTRIBUTORSHIP, IF THESE DOCUMENTS HAVE NOT BEEN PRESENTED TO YOU IN ACCORDANCE WITH THESE REQUIREMENTS, YOU MAY VOID THE AGREEMENT WITHIN 90 DAYS BY SENDING NOTICE OF YOUR INTENTION TO THE GRANTOR BY UNITED STATES MAIL, RETURN RECEIPT REQUESTED. UPON RECEIPT OF THE NOTICE, THE GRANTOR MUST REFUND ALL MONIES YOU HAVE PAID FOR THE DISTRIBUTORSHIP PLUS INTEREST. THE DISCLOSURE STATEMENT CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE DISTRIBUTORSHIP AGREEMENT. THE AGREEMENT SHOULD BE CAREFULLY READ FOR AN UNDERSTANDING OF ALL RIGHTS AND OBLIGATIONS OF BOTH GRANTOR AND DISTRIBUTOR."

Source. 1977, 307:1. 1985, 300:7, 1(b).

Amendments—1985. Substituted "attorney general" for "division" following "filed with" in the first paragraph.

Effective date of 1985 amendment. 1985, 300:33, IV, provided that the provision of the

act amending this section was to take effect on the date the department of justice established by the act becomes operational on the date set according to 1983, 372:5, II. 1983, 372:5, II, is set out as a note following the analysis for RSA 21-G.

358-E:5 Acts Unlawful. It shall be unlawful for any person, in connection with the advertising, offering, contracting, sale or promoting of any distributorship in this state:

[No changes in paragraphs I and II.]

III. To make any untrue statement of a material fact, or to omit to state a material fact in connection with the documents and information required to be furnished to the attorney general or prospective distributor; and Amended 1985, 300:7, 1(b).]

[No change in paragraph IV.]

Amendments—1985. Paragraph III. Substituted "attorney general" for "division" preceding "or prospective."

Effective date of 1985 amendment. 1985, 300:33, IV, provided that the provision of the act amending this section was to take effect on

the date the department of justice established by the act becomes operational on the date set according to 1983, 372:5, II. 1983, 372:5, II, is set out as a note following the analysis for RSA 21-G.

CHAPTER 358-H

REGULATION OF RENTAL REFERRAL AGENCIES

CROSS REFERENCES

Department of justice, see RSA 21-M.

358-H:1 Definitions. As used in this chapter, the following terms shall have the following meanings:

HEALTH CLUBS

358-I:1

[No changes in paragraphs I-III.]

IV. "Rental referral agency" means any person who collects rental information for the purpose of assisting prospective tenants in locating specific rental properties in exchange for a fee or other consideration. It shall include, but not be limited to, businesses referred to by such terms as rental information service, apartment locator service, or apartment listing service. It shall not include businesses in which all agency employees and representatives who assist prospective tenants are licensed real estate salesmen or brokers, or are under the direct supervision of such salesmen or brokers, to the extent that such salesmen or brokers are actually engaging in or conducting the business, or acting in the capacity, of a real estate broker or salesman as defined and regulated by RSA 331-A. [Amended 1985, 174:1, eff. July 26, 1985.]

Amendments—1985. Paragraph IV. Substituted "to the extent that such salesmen or brokers are actually engaging in or conducting the business, or acting in the capacity, of a real estate broker or salesman as defined and

regulated by" for "or are under the direct supervision of such salesmen or brokers pursuant to" preceding "RSA 331-A" in the third sentence.

358-H:8 Surety Bond. A rental referral agency shall post a surety bond of not less than \$20,000 with the attorney general, department of justice. The type of surety bond shall be designated by the attorney general. No bond shall be accepted for filing unless it is with a surety company authorized to do business in this state. The surety may cancel the bond at any time upon giving 30 days' written notice to the attorney general. Any person who is damaged by any violation of this chapter, or by the rental referral agency's breach of the contract subject thereto, may bring an action against the bond to recover damages suffered and any other amounts allowable by law. The attorney general, in an action brought under this chapter or any other applicable provision of law, may likewise proceed against the bond. In no event shall the aggregate liability of the surety for all claims exceed the bond amount.

Source. 1983, 438:1. 1985, 300:7, 1(a), (b).

Effective date of 1985 amendment. 1985, 300:33, IV, provided that the provision of the act amending this section was to take effect on

the date the department of justice established by the act becomes operational on the date set according to 1983, 372:5, II. 1983, 372:5, II, is set out as a note following the analysis for RSA 21-G.

CHAPTER 358-I

HEALTH CLUBS

CROSS REFERENCES

Department of justice, see RSA 21-M.

358-I:1 Definitions. As used in this chapter: [No change in paragraph I.]

Legislative Reference Bureau

Room 641 Main Capitol, Harrisburg, Pennsylvania 17120
(717) 787-4223

Robert L. Cable
Director

Attached is the
material you requested.

We hope it will
be helpful to you.

A30

Authorized Signature _____ (Seal)

Sworn to and subscribed

before me this ____ day of ____ 19 ____

Notary Public

POST SUSPENSION AND REVOCATION

§35.161. Posting of Commission action.

(a) The broker who is a sole proprietor or the broker of record for a partnership or corporation must post notice of Commission action suspending the license of the employing broker. The notice will be provided by the Commission and must be posted at the main office and all branch offices of the suspended broker. This notice must be prominently posted and externally visible at all times during the period of suspension.

(b) Failure to post this notice as required shall constitute grounds for further suspension or revocation of the responsible party's license.

Source

The provisions of this § 35.161 adopted August 17, 1979, effective August 18, 1979. 9 Pa B 2688

★ RENTAL LISTING REFERRAL AGENTS

Authority

These §§ 35.171 — 35.176 issued under section 506 of the act of April 9, 1929 (P.L. 177, No. 175) (71 P.S. § 186), and section 404 of the act of February 19, 1980 (P.L. 15, No. 9) (63 P.S. § 455.404)

Source

The provisions of these §§ 35.171 — 35.176 adopted August 5, 1983, effective August 6, 1983. 13 Pa B 2400

§35.171. Application.

(a) An applicant for a license as a rental listing referral agent shall apply therefor in writing upon applications prepared and furnished by the Commission and shall meet all the requirements for licensure as a salesperson, except that the applicant need not be affiliated with a broker.

A31

(b) The application shall contain the following information in addition to such other information as the Commission may require:

- (1) Name of the owner of the rental listing referral business.
- (2) Name of the manager of the rental listing referral business.
- (3) Name under which the rental listing referral business will operate.
- (4) Address of rental listing referral business.

§35.172. Fees.

The following fees shall be paid by persons seeking licensure as rental listing referral agents:

- (1) A fee of \$20 shall accompany an application for examination as a rental listing referral agent.
- (2) Persons previously examined and licensed by the Commission shall submit an additional fee of \$20 for licensure as a rental listing referral agent.

§35.173. Office manager.

(a) Each rental listing referral office shall be supervised by a manager, who is duly licensed as a rental listing referral agent. A manager is permitted to manage only one rental listing referral office.

(b) If the owner of the rental listing referral agency is a corporation or a partnership, then an officer or an employe in the case of a corporation, and a partner or an employe in the case of a partnership, shall be the manager of record for the business.

§35.174. Office requirements.

(a) Every person licensed as a rental listing referral agent shall have and maintain a definite place of business within this Commonwealth.

(b) Each place of business maintained by a rental listing referral agent shall comply with the following requirements:

- (1) The business name designated on the application, along with the phrase "Rental Listing Referral Agency" shall appear prominently displayed in all advertisements by the rental listing referral agent.
- (2) All rental listing referral agents' licenses issued by the Commission shall be posted prominently inside the office.

§35.175. Contracts.

(a) A rental listing referral agent may not publish rental information concerning a property for which the owner or listing broker has expressly stated their intent not to have the property included in lists prepared by rental referral agencies.

(b) A written contract shall be executed between the rental listing referral agent and the prospective tenant which lists the rental specifications desired by the prospective tenant, including but not limited to, location and price range.

(c) The list of rentals given to a prospective tenant must, by including substantially like rentals, meet the minimum specifications listed by the prospective tenant in the contract described in subsection (b).

(d) The availability of the rental units must have been verified no more than 4 days prior to the date the fee is paid by the prospective tenant.

(e) Each contact shall contain the following statement in bold print: "We are a referral service only. We are not acting as real estate salesmen or brokers. We do not guarantee that the purchaser will find a satisfactory rental unit through our services. Our only purpose is to furnish the purchaser with lists of available rental units."

§35.176. Function.

A rental listing referral agent's function is limited to the collection of rental information for the purpose of referring prospective tenants to rental units or locations of such units. A rental listing referral agent shall not negotiate leases or offer to sell, or offer information on property for sale or options on such property.

CHAPTER 37. STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS

GENERAL PROVISIONS

Sec

- 37.1 Definitions.
- 37.2 Applicability of general rules.

ORGANIZATION AND PROCEDURE

- 37.11. Organization of the Board.
- 37.12. Duties of officers and Board.
- 37.13. Meetings.
- 37.14. Order of business.
- 37.15. Procedure.
- 37.16. General registration.

REGISTERED PROFESSIONAL ENGINEERS

- 37.21 Application.
- 37.22 Fees.

288.2

(84390) No. 111 Feb.84

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A33

duty is hereby imposed upon the department, board, or commission, upon which demand is made, to render such power effective.

Section 503. Departmental Administrative Boards and Commissions.--Except as otherwise provided in this act, departmental administrative bodies, boards, and commissions, within the several administrative departments, shall exercise their powers and perform their duties independently of the heads or any other officers of the respective administrative departments with which they are connected, but, in all matters involving the expenditure of money, all such departmental administrative boards and commissions shall be subject and responsible to the departments with which they are respectively connected. Such departments shall, in all cases, have the right to make such examinations of the books, records, and accounts of their respective departmental administrative boards and commissions, as may be necessary to enable them to pass upon the necessity and propriety of any expenditure or proposed expenditure.

Section 504. Departmental Reports.--The head of each administrative department and each independent administrative board and commission shall, not later than October first of each even-numbered year, report in writing to the Governor concerning the condition, management, and financial transactions, of the department, board, or commission; such reports shall, except where impracticable, be for the two-year period ending May thirty-first of the year in which they are made. Each departmental administrative board and commission, and each advisory board and commission, shall, not later than September first of each even-numbered year, report in writing to the head of the department of which such board or commission is a part. All such reports shall be attached as exhibits to the report made by the head of the department to the Governor.

Except as otherwise in this act specifically provided, the reports required by this section shall be in lieu of all other reports heretofore required by law to be made by the several administrative departments, boards, and commissions, either to the Governor or to the General Assembly.

Section 505. Departmental Seals.--Each administrative department, each independent administrative board and commission, shall, and any departmental administrative board or commission may, adopt and use an official seal.

(505 repealed in part Apr. 28, 1978, P.L.202, No.53)

Section 506. Rules and Regulations.--The heads of all administrative departments, the several independent administrative boards and commissions, the several departmental administrative boards and commissions, are hereby empowered to prescribe rules and regulations, not inconsistent with law, for the government of their respective departments, boards, or commissions, the conduct of their employes and clerks, the distribution and performance of their business, and the custody, use and preservation of the records, books, documents, and property pertaining thereto.

~~Section 507. Purchases.--It shall be unlawful for any~~

CHAPTER 4
POWERS AND DUTIES OF THE
STATE REAL ESTATE COMMISSION -- GENERAL

*amended
1982-158*

~~Section 401. Duty to issue licenses.~~

~~It shall be the duty of the department to issue licenses to individuals, copartnerships and corporations, who shall comply with the provisions of this act.~~

~~Section 402. Approval of schools.~~

~~Any school which shall offer or conduct any course or courses of study in real estate shall first obtain approval from, and thereafter abide by the rules and regulations of the commission covering such schools.~~

~~Section 403. Authority to examine applicants.~~

~~The commission is empowered to prescribe the subjects to be tested. The department shall arrange for the services of professional testing services to write and administer examinations on behalf of the commission in accordance with commission guidance and approval.~~



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2/23/82
1982-633*

• Section 404. Power to promulgate regulations.

(a) The commission shall have the power to promulgate rules or regulations in order to administer and effectuate the purposes of this act. All existing rules or regulations adopted pursuant to the act of May 1, 1929 (P.L.1216, No.427), known as the "Real Estate Brokers License Act of one thousand nine hundred and twenty-nine," shall remain in full force and effect until modified by the commission. The proposed rules and regulations shall be submitted to the Secretary of the Senate and the Chief Clerk of the House of Representatives who shall cause the rules or regulations to be printed and distributed among all members of both chambers in the same manner as a reorganization plan. If both bodies fail to act within 60 days of receipt of such rules or regulations, or within ten legislative days after receipt, whichever shall last occur, rules or regulations adopted by the commission shall be promulgated pursuant to the provisions of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law and 45 Pa.C.S. Part II (relating to publication and effectiveness of Commonwealth documents).

repealed 1982-633

(b) If either chamber disapproves any rule or regulation, such information shall be certified by the Speaker of the House of Representatives or President pro tempore of the Senate to the commission, any such rule or regulation shall not be promulgated as a final rule or regulation.

~~Section 405. Duty to keep records confidential.~~

~~Neither the Commissioner of Professional and Occupational Affairs, any member of the commission, nor any deputy, secretary, representative, clerk or other employee of the Commonwealth, shall directly or indirectly, willfully, exhibit, publish, divulge, or make known to any person or persons any record, report, statement, letter,~~

A35



**General Assembly of Tennessee
OFFICE OF LEGAL SERVICES**

**War Memorial Building
Nashville, Tennessee 37219**

March 21, 1986

Mr. Kenneth T. Levenbook
Committee Counsel
Suite 100, Legislative Office Building
Raleigh, North Carolina 27611

Dear Mr. Levenbook:

I am in receipt of your letter dated March 6, 1986 relative to rental referral agencies. I have enclosed materials which I believe are germane to your request to this office. If this office may be of further assistance, please contact us at your earliest convenience.

Very truly yours,

A handwritten signature in cursive script that reads "Fred Standbrook".

FRED STANDBROOK
Legislative Attorney

FS/bac

Enclosures

A36

Comparative Legislation. Antique dealers:
Va. Code § 54-836.1.

CHAPTER 23
[RESERVED.]

CHAPTER 24
[RESERVED.]

CHAPTER 25
RENTAL LOCATION AGENTS

SECTION.		SECTION.	
62-25-101.	Short title.	62-25-106.	Award for damages, costs and attorney fees.
62-25-102.	Definitions.	62-25-107.	Investigation by real estate commission — Suspension or revocation of license.
62-25-103.	License requirements — Bond.		
62-25-104.	Contract or receipt required — Total or partial refund of fee.		
62-25-105.	Violations — Misdemeanor.		

62-25-101. Short title. — This chapter shall be known and may be cited as the "Rental Location Agent Act of 1978." [Acts 1978 (Adj. S.), ch. 663, §1; T.C.A., § 62-2501.]

Cross-References. Liability of professional societies, §§ 62-50-101 — 62-50-103.

62-25-102. Definitions. — As used in this chapter, unless the context otherwise requires:

(a) "Person" means any natural person, corporation, partnership, firm, or association.

(b) "Rental location agent" means any person who engages in or is employed in the business of locating, providing assistance in locating, or furnishing information concerning the location or availability of real property, including apartment housing, which may be leased or rented as a private dwelling, abode, or place of residence, and who receives or solicits a fee or other valuable consideration from a prospective tenant. [Acts 1978 (Adj. S.), ch. 663, § 2; T.C.A., § 62-2502.]

Section to Section References. This section is referred to in § 62-25-104.

62-25-103
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(c) With the exception of the commissioner of agriculture, no proxies, nor power to designate a representative to serve in the place of a board member shall be allowed when this board sits as a licensing examining board. [Acts 1978 (Adj. S.), ch. 844, § 4; T.C.A., § 62-2104; Acts 1983, ch. 125, §§ 1, 2.]

Compiler's Notes. The pest control board created by this section terminates June 30, 1987. See §§ 4-29-112, 4-29-208. **Section to Section References.** This section is referred to in § 4-29-208.

62-21-124. Pesticides in buildings used for food preparation and service, or lodging. — Whether or not engaged in the business of applying pesticides, no person shall apply a pesticide within any building used for the preparation and serving of food or for the temporary or permanent lodging of others, except under the direct supervision of one licensed to apply pesticides in accordance with this chapter; provided, however, this sentence shall not apply to the application of pesticides by an individual in his dwelling, nor to the application of pesticides by the owner of a multi-unit dwelling in which the owner resides and which contains not more than three (3) additional units used for the temporary or permanent lodging of others. [Acts 1978 (Adj. S.), ch. 844, § 24; 1981, ch. 78, § 4; T.C.A., § 62-2124; Acts 1985, ch. 217, § 1.]

Amendments. The 1985 amendment added "preparation and serving of food or for the" following "building used for the." **Attorney General Opinions.** Constitutionality of classification, OAG 83-163 (4/20/83). **Effective Dates.** Acts 1985, ch. 217, § 2. April 18, 1985.

CHAPTER 25

RENTAL LOCATION AGENTS

SECTION

62-25-103. License requirements — Bond.

62-25-103. License requirements — Bond. — (a) It is unlawful for any person to engage in the business or capacity of a rental location agent in this state without first having obtained a license from the real estate commission. A license held by a real estate broker or real estate salesman employed by a licensed real estate broker shall be deemed to satisfy the license requirements of this chapter.

(b) The application for such license shall be filed in the office of the real estate commission on such forms as the commission may prescribe and shall be accompanied by a fee of ten dollars (\$10.00). All licenses shall expire on July 31 of each year.

(c) In order to effectuate the purposes of this chapter, the commission shall have the power to promulgate all necessary rules and regulations.

(d)(1) The real estate commission may apply to a court of competent jurisdiction for an order enjoining any act or practice which constitutes a violation of this chapter.

(2) Upon a finding by the court that there are reasonable grounds to believe that a person is engaging in any such act or practice or is about to engage in

A38

any such act or practice, an injunction, a restraining order, or any other appropriate order shall be granted by the court, regardless of the existence of another remedy.

(3) Any proceeding for relief pursuant to this section shall be in accordance with the Tennessee rules of civil procedure.

(e)(1) Every rental location agent shall secure a bond executed to the state of Tennessee by a surety company duly authorized to do business in this state.

(2)(A) Such bond shall be in a form approved by the district attorney general, and shall be for the use and benefit of any person who may be injured or aggrieved by the wrongful act or default of such rental location agent.

(B) Any person so injured or aggrieved may bring an action in his own name on such bond without assignment thereof.

(3)(A) The bond required by subsection (e)(1) and (2) shall be in the amount of ten thousand dollars (\$10,000), provided, however, that such bond may be in the amount of two thousand five hundred dollars (\$2,500) for any rental location agent employed by a corporation, partnership, firm, or association which is licensed under this chapter.

(B) Such bond shall be in full force and effect at all times and places in which the licensee acts as a rental location agent in this state.

(4) Each bond secured pursuant to this subsection shall be recorded in the office of the clerk of the county in which the licensee maintains an office or is employed. Until such bond is so recorded, the holder of the license shall not exercise any of the rights and privileges therein conferred.

(5) Any licensed real estate broker or affiliate broker who has obtained a bond in accordance with chapter 13 of this title, need not secure an additional bond hereunder; however, the provisions of § 62-13-306 [repealed] shall apply with respect to any wrongful act or default of a broker or affiliate broker occurring in his capacity as a rental location agent.

(f) Any person who violates any provision of this section shall be guilty of a misdemeanor. [Acts 1978 (Adj. S.), ch. 663, § 3; 1981, ch. 298, § 1; T.C.A., § 62-2503; Acts 1982 (Adj. S.), ch. 864, § 17.]

Compiler's Notes. Section 19 of Acts 1982 (Adj. S.), ch. 864 provided that the 1982 amendment take effect September 1, 1982. For provisions in effect prior to that date, see the bound volume.

Section 62-13-306, referred to in subdivision (e)(5), was repealed by Acts 1984, ch. 810, § 7.

CHAPTER 26

PRIVATE INVESTIGATORS

SECTION.

- 62-26-101. Definitions.
62-26-103. Application — Fee.
62-26-104. Investigation of applicant.
62-26-105. Issuance of license — Identification card.

SECTION.

- 62-26-109. Revocation of license and identification card.
62-26-110. Penalties for violations.

62-26-101. Definitions. — As used in this chapter unless the context clearly requires otherwise:

(1) "Clerk" mea

(2) "Felony" me or any other state

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62-26-103. App private investigato clerk may prescri (\$70.00); said pers county and complet prescribe, and shall persons in processi until all costs have 1979, ch. 328, § 7;

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62-26-104. Inve tion, the clerk shall county in which th (b) The district a ascertain whether misdemeanors in ar clerk. [Acts 1978 (A § 4.]

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(f) Any person who violates any provision of this section shall be guilty of a misdemeanor. [Acts 1978 (Adj. S.), ch. 663, § 3; 1981, ch. 298, § 1; T.C.A., § 62-2503.]

Cross-References. Director of division of regulatory boards to promulgate rules concerning certain license renewal dates, § 56-1-302.

Penalties for misdemeanors, § 39-105.

Collateral References. Recovery of money paid to unlicensed person required by law to have occupation or business license or permit to make contract. 74 A.L.R.3d 637.

62-25-104. Contract or receipt required — Total or partial refund of fee. — (a) Every location rental agent engaged in any of the activities described in § 62-25-102(b) shall give a prospective tenant a contract or receipt, and such contract or receipt shall include a recital that any amount in excess of ten dollars (\$10.00) shall be repaid or refunded to the prospective tenant if the prospective tenant after bona fide effort does not obtain a rental through the listing furnished by the rental location agent.

(b) Notwithstanding any other provision of this section, if the information concerning rentals furnished by the rental location agent is not current or accurate in regard to the type of rental desired, the full fee shall be repaid or refunded to the prospective tenant upon demand.

(c) The contract or receipt furnished to the prospective tenant shall also conform to rules and regulations adopted by the real estate commission designed to effect disclosure of material information regarding the services to be provided to the prospective tenant. [Acts 1978 (Adj. S.), ch. 663, § 4; T.C.A., § 62-2504.]

Cross-References. Violation of this section a misdemeanor, § 62-25-105.

Section to Section References. This section is referred to in § 62-25-105.

62-25-105. Violations — Misdemeanor. — (a) It is unlawful for any person to knowingly refer a prospective tenant to:

- (1) A nonexistent address;
- (2) Property which is not for lease or rent;
- (3) Property which does not meet the specifications of the prospective tenant;
- (4) Property which leases or rents for a different price from that quoted by the rental location agent;
- (5) Property which has already been leased or rented; or
- (6) Property listed without the consent of the landlord.

(b) It is unlawful for any person acting as a rental location agent to advertise in any manner without including his name and the fact that he is a rental location agent in the advertisement.

(c) It is unlawful for any person acting as a rental location agent to solicit a listing from a landlord after receipt of written notice from the landlord requesting that no further solicitations be made.

(d) Any person who violates any of the provisions of subsections (a), (b), or (c) of this section or § 62-25-104 shall be guilty of a misdemeanor. [Acts 1978 (Adj. S.), ch. 663, § 5; T.C.A., § 62-2505.]

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A40

NORTH CAROLINA RENTAL REFERRAL AGENCIES

Triangle Home Rental of Raleigh located at 404 Hillsborough Street (834-1334) and Tarheel Home Rental of Charlotte located at 1931 E. Independence (334-9171) both owned by Mr. Sam Warwick.

Rental Locators of Fayetteville located at 2829 Bragg Boulevard (484-2193) owned by Mr. Kerry Lemox and managed by Ms. Margie Freeman.

Rental Locators of Wilmington located at 1315 S. College (799-9800) owned by Mr. Kerry Lemox and managed by Mr. Tad Burke.

Rent-A-Home of Wilmington located at 1431 42nd Street (799-0552) owned by Ms. Rebecca Hall.

