
OLR Bill Analysis

sHB 6769

AN ACT CONCERNING THE DEPARTMENT OF CONSUMER PROTECTION'S RECOMMENDATIONS REGARDING REAL ESTATE LICENSING AND ENFORCEMENT.

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BACKGROUND

SUMMARY

This bill makes various changes to the laws governing real estate business, including the laws on credentialing and the Department of Consumer Protection (DCP) commissioner's authority and oversight.

With regard to real estate credentials, the bill (1) creates a new credential for residential leasing agents and deems these licensees, along with brokers and salespeople, "real estate licensees"; (2) clarifies that an associate broker may work for another broker in a capacity that is similar to that of a real estate salesperson; and (3) codifies a registration process for schools offering prelicensure and continuing education courses. For DCP-issued real estate licenses, the bill makes them biennial, rather than annual, licenses and allows for license reinstatement within three, rather than two, years of expiration. It adds provisions applicable to all licensees on their duty to disclose or keep confidential certain information. It also creates a process for transitioning or wrapping up a brokerage business in the event of a broker's death or incapacity.

The bill also makes many minor and technical changes to the real estate licensing laws (i.e., chapter 392) to clarify existing requirements for real estate licensees or conform to current practice. Among other minor changes, the bill:

1. updates the definition of "advertising" used in the laws on real estate (i.e., chapter 392) to reflect the trend away from print advertising to online and electronic advertising (§§ 1, 32 & 40);
2. clarifies that when the real estate licensing laws refer to a "one-to-four-family" property the reference includes (a) a cooperative or condominium with up to four units and (b) an individual unit in a multiunit development (§§ 1 & 35-36);

3. specifically permits a real estate team to transfer the team's registration from one supervising licensee (broker) to another without applying for a new team registration (§ 9);
4. requires, when a team transfers to a new supervising licensee, the new supervising licensee to electronically update the team's registration information with DCP within 14 days (§ 16);
5. eliminates a requirement in the real estate license reciprocity law granting reciprocity to out-of-state credentialed applicants only if the other state grants reciprocity to Connecticut licensees (§ 14);
6. eliminates a provision requiring applicants for a reciprocal license to consent to receiving service of process through the Connecticut Real Estate Commission (§ 14);
7. allows a Connecticut-licensed broker, salesperson, or leasing agent to compensate an out-of-state broker or salesperson (but not an out-of-state leasing agent) for referring a prospective party to a real estate transaction in Connecticut (§§ 27 & 32);
8. prohibits brokers from making unilateral offers of subagency or otherwise affiliating with a subagent, consistent with the current practice (§ 30);
9. unless it is commercially impractical, requires brokers to keep documents (e.g., purchase contracts, leases, options) in an electronic format, rather than allowing them to use any format to comply with the law's records retention requirements (§ 33);
10. requires the provision of a one-page disclosure on housing discrimination and federal and state fair housing laws at the closing for any residential property, not just closings for properties with at least two units (§ 37);
11. clarifies the law stipulating who is exempt from real estate licensing laws, including specifying a broker's clerical staff is exempt (§ 39); and

12. repeals an obsolete conflict of interest provision (§ 44).

Regarding enforcement powers, the bill clarifies that DCP has broad authority to investigate real estate licensees and others engaged in the real estate business and allows DCP or the Real Estate Commission to impose fines of up to \$5,000 per violation. Under current law, the cap is \$2,000, except first violations of the law on illegal referral fees is currently capped at \$1,000 (§§ 17 & 18). The bill similarly raises the cap, from \$1,000 to \$5,000 on fines imposed by the Real Estate Commission on people engaging in real estate business without the required license (§ 9). By law, failure to get a required real estate license may result in up to six months imprisonment. The bill extends this consequence to people engaged in leasing activities without the required leasing agent license the bill establishes (§ 26). And lastly, the bill sets fines for licensees who fail to complete required continuing education coursework on time (§ 15).

EFFECTIVE DATE: April 1, 2024

§ 2 & 16 — SUPERVISING BROKERS' RELATIONSHIP WITH ASSOCIATE BROKERS

Clarifies that an associate broker may work for another broker ("supervising licensee") in a capacity that is similar to a real estate salesperson, which is consistent with current practice

The bill clarifies the relationship between supervising brokers (formerly called "sponsoring brokers") and associate brokers. The bill prohibits associate brokers from practicing real estate unless the supervising licensee responsible for controlling and supervising the associate broker knows that the latter is engaging in real estate business and has consented to it.

Under the bill, a "supervising licensee" is the real estate broker who is responsible for controlling and supervising another real estate licensee (broker, salesperson, or leasing agent) or a team of them (i.e., a group that advertises using a team name and is affiliated with a single supervising licensee). An "associate broker" is a broker affiliated with a supervising licensee in an employee or independent contractor capacity with authority to engage in real estate business on the supervising

licensee's behalf. The bill requires supervising licensees to bear responsibility for associate brokers' actions in the same way they would for affiliated salespeople.

When an associate broker's affiliation ends, he or she must notify DCP by the earlier of 14 days after the (1) termination or (2) start of an affiliation with another supervising licensee. As is the case for salespeople under existing law, the bill requires associate brokers who transfer their affiliation to a different broker to register the transfer with DCP, at a cost of \$25.

The bill specifies that associate brokers must comply with the same advertising standards required of other real estate brokers and specifically requires them to include the name of the supervising licensee in a prominent location in all their advertisements.

§§ 3-4, 12 & 17 — REAL ESTATE EDUCATION PROGRAMS

Generally replaces regulatory requirements on prelicensing and continuing education courses with similar statutory ones

The bill creates a statutory scheme setting requirements for schools that offer real estate prelicensing or continuing education courses, which are generally similar to current regulatory requirements related to (1) DCP-registration, (2) course offering approvals, and (3) instructor qualifications.

It correspondingly eliminates a requirement that the DCP commissioner adopt regulations on approval of continuing education schools, but continues to allow the commissioner, in consultation with the Real Estate Commission, to adopt regulations on prelicensing or continuing education school approval, advertising, and course offerings.

DCP Registration

The bill requires all schools that offer prelicensing or continuing education courses to register with the department biennially, in a form and manner prescribed by the DCP commissioner. The registration fee is \$100 biennially. The form must include an attestation that (1) all courses it offers comply with the applicable requirements (including

being individually registered, as the bill requires) and (2) the instructors teaching courses at the school meet the bill's prescribed qualifications.

The bill prohibits DCP from disapproving schools or courses just because courses are taught by electronic means.

The bill subjects real estate school registrants to DCP or the Real Estate Commission's authority under existing law to investigate registrants, temporarily suspend or permanently revoke a registration, and fine violators of real estate credentialing laws up to \$5,000 per violation.

Instructors

Under the bill, an instructor must have:

1. at least five years of experience as a practicing real estate licensee;
2. expertise, or a professional designation from an institute or society in the field in which the instructor teaches; or
3. (a) experience teaching a course in a formal education program or (b) attended an accredited college or university extension instructors' seminar.

If teaching a collegiate level course that is part of a degree program, the instructor must have (1) teaching experience and a master's degree in an appropriate field or (2) another combination of qualifications that the Real Estate Commission approves.

Course Registration

Under the bill, each prelicensing or continuing education course a school offers must be registered with DCP. Only registered and approved courses count toward licensing or continuing education requirements. The cost to register each course is \$50 and registrations are valid for five years. The school must submit to DCP an application, in a format the department specifies, that includes:

1. an outline of the course content detailing its duration and the amount of time spent on each subject covered;

2. the course instructor's name and contact information;
3. a copy of the certificate that will be issued to students upon completion or, if the school offers more than one course, the DCP-approved template course completion certificate;
4. the cancellation and refund policy;
5. an attestation that the course meets all legal requirements; and
6. if the course is provided in-person, the location.

For prelicensing courses, content must be delivered on an in-person basis or through electronic means incorporating a live online format. If a prelicensing or continuing education course is offered by electronic means that do not allow for real-time audio communication between the instructor and students, the school must include in the course periodic interactive assessments to confirm each student's level of comprehension and engagement.

For continuing education courses, the content does not need to be delivered live, but the course must be delivered in a way that prevents students from finishing it in less time than the duration specified in the application. The following meet this requirement:

1. offering a live online course format using telecommunications technology that allows for real-time audio communication between the instructor and students, or
2. using technology that prohibits a student from completing the course in less time than the total course duration specified in the application the school filed with DCP.

§ 5 — ACKNOWLEDGEMENT OF INTERPRETER SERVICES

Requires parties to a real estate transaction or negotiation to sign a form that specifically acknowledges that a language interpreter's services were used

Form When Third Party Serves as Interpreter

Under the bill, if a buyer or renter uses an interpreter (other than the real estate licensee or their employee) for a real estate transaction or

negotiation, the real estate licensee must give the buyer or renter and the interpreter a form containing certain language, and have them sign it. The language must read as follows:

I, (name of buyer or renter), used (name of interpreter) to act as my interpreter during this real estate transaction or these negotiations. The obligations of this contract or other written agreement were explained to me in my native language by the interpreter. I understand the contract or other written agreement.

(signature of buyer or renter)

(relationship of interpreter to buyer or renter)

I, (name of interpreter), acted as interpreter during this real estate transaction or these negotiations. The obligations of the contract or other written agreement were explained to (name of buyer or renter) in their native language. I understand the contract or other written agreement.

(signature of interpreter)

(relationship of interpreter to buyer or renter).

Form When Real Estate Licensee Acts as Interpreter

If a real estate licensee acts as an interpreter for a buyer or renter while also engaging in a real estate transaction, the bill requires the real estate licensee to get the buyer or renter's signature on a form the licensee must provide containing the following language written in the buyer or renter's native language:

This real estate transaction or these negotiations were conducted in (buyer's or renter's native language), which is my native language. I voluntarily choose to have the Real Estate (Broker/Salesperson/Leasing Agent) act as my interpreter during the negotiations. The obligations of the contract or other written agreement were explained to me in my native language. I understand the contract or other written agreement.

If the buyer's or renter's native language cannot be reduced to writing, the form must be in English.

§ 6 — WRAPPING UP OR TRANSITIONING BROKERAGE BUSINESS

Establishes a process for a brokerage business to wrap up or transition under the oversight of a custodial broker in the event of a broker's death or incapacitation

Under the bill, if a broker dies or is mentally or physically incapacitated and unable to serve as a broker, the executor of his or her estate (or another legally authorized person) may apply to DCP requesting the appointment of a custodial broker. If DCP approves the application, it must appoint a custodial broker to serve a maximum 180-day term, unless DCP extends it after receiving a hardship application. Under the bill, a "custodial broker" is a licensed broker who is temporarily appointed just to:

1. conclude the deceased or incapacitated broker's real estate business matters or transition them to another broker; or
2. assist in transitioning the broker's ownership interest in a business entity engaged in real estate to comply with the law's requirements for broker businesses (e.g., ownership and control requirements).

Custodial brokers must preserve the financial interests of the deceased or incapacitated real estate broker or the estate of the deceased real estate broker. They cannot negotiate the purchase, sale, or lease of real estate on behalf of the deceased or incapacitated broker unless:

1. the prospective purchaser, seller, lessor, or lessee entered into a preexisting buyer agreement, listing agreement, or leasing agreement with the deceased or incapacitated broker; and
2. the prospective purchaser or lessor has executed a contract or paid a deposit to a seller or lessee to reserve a right to purchase or lease.

Associates and Team Members

The bill prohibits salespeople and team members from engaging in

real estate business while the broker serving as their supervising licensee is deceased or incapacitated unless a custodial broker has been appointed.

Serving as the Designated Broker

If a business entity's designated broker (i.e., the person with the power to supervise and control a broker business entity) is deceased or incapacitated, the business entity cannot conduct real estate transactions unless a custodial broker has been appointed.

If a custodial broker is appointed to serve as the business entity's designated broker, the business entity may engage in real estate transactions to the same extent that it would if the designated broker was not a custodial broker.

§§ 7, 9-11, 14-24, 33 & 38 — CREATION OF REAL ESTATE LEASING AGENT CREDENTIAL

Creates a new leasing agent license and outlines residential real estate activities a leasing agent is permitted to engage in and under whose affiliation

The bill creates a new real estate license for leasing agents operating in residential developments.

Scope of Work and Employment

Under the bill, a "leasing agent" is someone who acts as agent for a principal for a commission, fee, or other valuable consideration and engages in residential leasing or renting activity (e.g., collecting security deposits, offering or negotiating a rental, or collecting rent). The bill specifies that leasing agents cannot engage in any activity that requires a broker or real estate salesperson's license, including (1) selling, offering, listing, negotiating, referring, or showing for sale; (2) entering into lease-to-own agreements; or (3) leasing commercial real estate.

Leasing agents must only work for and be employed by a development owner who, under the bill, is (1) the owner of record of a multiunit development in which units are offered for lease or (2) the parent company holding a 100% interest in the owner of record. "Multiunit developments" are residential properties with at least 50 units that are rentals. Leasing agents must have a written contract before

engaging in leasing activity for a development. Contracts must be maintained for at least seven years and provided in electronic form to DCP upon request.

When a leasing agent's affiliation ends, he or she must notify DCP within 14 days after the (1) termination or (2) start of an affiliation with another development owner, whichever occurs first.

Licensure

The leasing agent exam application fee is \$80. The exam must be prepared by DCP or by a national testing service it designates. If the applicant takes a national testing service exam, there may be an additional fee. The DCP commissioner must adopt regulations on what qualifies as a passing score.

The bill specifies that before a leasing agent sits for an exam, he or she must prove to the DCP commissioner's satisfaction that he or she has:

1. successfully completed an approved course or courses, totaling at least 20 classroom hours, and including training on fair housing law, landlord tenant law, and security deposit management; or
2. equivalent experience or education as determined adequate by the Real Estate Commission or DCP commissioner.

Under the bill, a leasing agent applicant must have a good reputation for honesty, truthfulness, and fair dealing, as is the case under existing law for other licensees.

The initial biennial license fee and biennial renewal fee for a leasing agent is \$570. \$6 from each renewal goes to the Real Estate Guaranty Fund (see below). Under the bill, a leasing agent must complete at least four hours of continuing education during the two-year period that begins 27 months before the license's renewal date and ending three months before the renewal date. At least one hour of it must address fair housing law. The biennial continuing education processing fee is \$8.

The bill authorizes the DCP commissioner to adopt regulations on the application process for a leasing agent license and the occupation generally.

First Contribution to Real Estate Guaranty Fund

The bill subjects leasing agents to the guaranty fund law, including requiring applicants seeking a leasing agent license to make a \$20 contribution to the fund and allowing people aggrieved by an agent's actions to apply for compensation from it. If the fund compensates a consumer, the leasing agent is ineligible to receive a new license until any payout, plus interest, is reimbursed.

The Real Estate Guaranty Fund, administered by DCP, can reimburse consumers up to \$25,000 if they suffer financial losses in unscrupulous real estate transactions.

Treated as Other Real Estate Licensees

The bill generally extends to leasing agents provisions in existing law that apply to real estate brokers and salespeople, including provisions that:

1. allow the employer (i.e., development owner) to enter into a written contract with them specifying that the agent is an independent contractor for purposes of the workers' compensation law (§ 10);
2. allow leasing agents credentialed in another state to get a reciprocal license in Connecticut, under specified circumstances (§ 14);
3. concern license renewals and reinstatements, as modified by the bill (see "RENEWALS, REINSTATEMENT, AND APPEALS" below);
4. allow DCP and the Real Estate Commission to investigate licensees, temporarily suspend or permanently revoke a license, and fine violators of real estate licensing laws up to \$5,000 per violation (cap raised to this amount by the bill, see § 17);

5. as is the case for salespeople under existing law, require leasing agents who transfer their affiliation to a different property owner to register the transfer with DCP, at a cost of \$25 (§ 16);
6. prohibit influencing appraisals (§ 19); and
7. prohibit revealing or misusing confidential information about a prospective or former client (§ 31).

§§ 11 & 15 — RENEWALS, REINSTATEMENT, AND APPEALS

Makes licenses biennial and adjusts fees accordingly; imposes fines for failure to complete continuing education requirements on time; modifies the deadlines and process for seeking reinstatement; clarifies the appeals process for license denials

Biennial Licenses

The bill makes broker and salesperson licenses biennially, rather than annually, renewable. It also makes the new leasing agent license biennially renewable. It correspondingly increases the:

1. initial license fee for brokers from \$565 to \$1,130;
2. renewal fee for brokers from \$375 annually to \$750 biennially;
3. initial license fee (and identical renewal fee) for salespeople from \$285 to \$570;
4. continuing education processing fee from \$4 annually to \$8 biennially; and
5. amount of each real estate license renewal fee that goes to the Real Estate Guaranty Fund from \$3 to \$6.

Late Renewal and Reinstatement

Under the bill, if a renewal application is submitted within 90 days of the credential's expiration, the applicant does not have to apply for reinstatement. But the applicant may be subject to the statutory late fee (10% of the renewal fee, but not less than \$10 or more than \$100) (CGS § 21a-4(c)).

Under the bill, if more than 90 days elapse, but fewer than three years,

an application for reinstatement is required. Under current law, reinstatement may be sought only within two years from the license's expiration. As under existing law, reinstatement is discretionary.

Under the bill, reinstatement requirements vary depending on whether the person worked in the field without a required license. The bill applies the same fee structure that already applies to reinstatements, but adds requirements for continuing education. So, under the bill:

1. if the applicant did not work, he or she must (a) pay the current year's renewal fee for reinstatement and (b) take any continuing education required for the year of, and the year before, the reinstatement; and
2. if the applicant worked, he or she must (a) pay all license and late fees due for the period the credential was lapsed and (b) demonstrate completion of any continuing education required for the year before reinstatement.

For each year or fraction of a year from the date of expiration, the late fee is \$375 for brokers and \$285 for salespeople or leasing agents.

Military Reinstatements

The bill similarly gives people in the military up to three years, instead of the current two years, to seek a no-fee reinstatement. But the bill additionally requires them to show that they completed at least six hours of continuing education, including the mandatory continuing education required for their license, during the calendar year before the date they file for reinstatement.

Continuing Education Delinquency Fee

Under the bill, if a real estate licensee fails to complete the required continuing education for any two-year license period, they must pay:

1. \$315 if the requirements were met within two months after the license period expired or
2. \$625 if the requirements were met more than two months, but

less than four, after the license period expired.

The department must prescribe how a licensee can report this information to it.

Appeals Following Denial

The bill enhances current law's appeals process when a real estate applicant is refused a license. As under current law, denied applicants (for an initial or renewed license) are afforded an opportunity for a hearing.

The bill specifies that following a denial, DCP must send a notice to the applicant disclosing the denial and informing them that they may request a hearing by submitting a written hearing request within 30 days after the notice was sent. If the applicant requests a hearing, DCP must send him or her a notice disclosing the grounds for the license denial. DCP must hold the hearing and, if the denial is sustained, the applicant may file a new application for the same license or renewal one year after the denial date.

§ 29 — DISCLOSURES TO OTHER PARTY AND PROSPECTIVE PARTIES

Simplifies requirements for licensees' disclosure of their clients' identity; requires additional disclosures to prospective parties (e.g., concerning agency relationship and fair housing)

Under current law, brokers and real estate salespeople who represent a seller, lessor, prospective purchaser, or lessee must disclose, in writing, the identity of their client to any party to the transaction who does not have a broker or salesperson representing them. Under current law, if it is a commercial transaction, the disclosure is required before the prospective purchaser or lessee signs the purchase contract or lease. For residential transactions, the disclosure is required at the beginning of the first personal meeting concerning (1) the prospective purchaser's or lessee's specific needs in the transaction or (2) the seller's or lessor's real property. The bill instead requires real estate licensees to disclose their client's identity upon request.

The bill requires licensees to disclose to prospective parties in writing

(including by electronic means) by the first personal meeting:

1. the types of agency relationships available to the prospective party and
2. that the prospective party should not share confidential information with the licensee until the prospective party has entered into a written representation agreement with the licensee.

If it is a residential real estate transaction, licensees must also give a prospective party information on fair housing discrimination, including a description of federal and state fair housing laws, protected classes, and where to get more information and available resources.

As under existing law, the DCP commissioner must adopt regulations to carry out these disclosure provisions as he deems necessary.

§ 31 — PROSPECTIVE PARTIES' CONFIDENTIAL INFORMATION

Expands existing law by prohibiting real estate licensees from misusing confidential information to include information on prospective parties

Existing law, with limited exceptions, prohibits real estate licensees from (1) revealing confidential information about a person whom they represented as an agent, designated buyer agent, or a designated seller agent; (2) using confidential information about that person to the person's disadvantage; or (3) using confidential information about that person for the licensee's advantage or the advantage of a third party. The bill expands these prohibitions to include confidential information about prospective parties, which the bill defines as people that communicate with a licensee in contemplation of potential representation in a real estate transaction.

BACKGROUND

Related Bills

SB 135 (File 95), reported favorably by the General Law Committee, reduces various occupational registration, certification, and license fees, including those for brokers and salespeople (see § 7).

sHB 6767, reported favorably by the General Law Committee, (1) revises the process for renewing a DCP credential after the deadline for doing so has passed by setting a broadly applicable 90-day threshold for untimely renewals and (2) generally requires reinstatements to be requested within three years of a credential's lapse (§§ 20 & 28-29).

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 23 Nay 0 (03/09/2023)