

ORIGINAL SENATE
FILE NO. SF0096

ENROLLED ACT NO. 75, SENATE

SIXTY-FOURTH LEGISLATURE OF THE STATE OF WYOMING
2017 GENERAL SESSION

AN ACT relating to professions and occupations; conforming real estate brokers and salespersons licensing and authority provisions to current practice; authorizing responsible brokers to supervise multiple business entities; requiring disclosure of licensee relationships; regulating marketing and advertising; allowing transactions without signed acknowledgment of relationship disclosures; conforming terminology; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 33-28-102(b)(iv), (vi), (xxix), (xlv)(H), (xlvi), (xlix) and (li), 33-28-103(a)(vi), 33-28-105(c)(iii) and (d), 33-28-106(c)(ii), (f)(intro) and (n)(ii), 33-28-107(a), 33-28-108, 33-28-109, 33-28-110(b)(iv) and (d)(intro), 33-28-111(a)(intro), (ix), (xvi), (xvii), (xxix)(A) and by creating a new subparagraph (D), 33-28-115, 33-28-118(e), 33-28-119(a) and (d) through (g), 33-28-122(a)(intro) and (i), 33-28-123, 33-28-202(a), 33-28-204, 33-28-302(a), (h)(iii), (iv) and (j), 33-28-305(g), 33-28-306(b), 33-28-308(a) through (d) and (f) through (h) and 33-28-310 by creating a new subsection (e) are amended to read:

CHAPTER 28
REAL ESTATE BROKERS AND SALESPERSONS

33-28-102. Definitions.

(b) As used in this act:

(iv) "Associate broker" means an individual who has qualified as ~~a~~an associate broker under this act, is

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licensed by the commission under a responsible broker and does not have supervisory responsibilities;

(vi) "Branch office" means any office location of a real estate company that is separate from a principal office and supervised by a responsible broker; ~~other than his principal place of business;~~

(xxix) "License" means the document issued by the commission certifying that the person named by the person's legal name on the document had fulfilled all requirements for licensure under this act;

(xlv) "Real estate activity" occurs when an individual for another and for compensation performs any one or more of the following:

(H) Engages in the business of charging an advance fee in connection with any contract undertaken to promote the sale, auction or lease of real estate either through its listing in a publication issued for that purpose or for referral of information concerning the real estate to responsible brokers, associate brokers and salespersons;

(xlvi) "Real estate company" means a domestic or foreign business entity ~~including a firm, company, corporation, partnership, sole proprietorship or other entity which is~~ that is authorized to conduct business in Wyoming and licensed by the commission to conduct real estate activity;

(xlix) "Responsible broker" means an individual who has an active responsible broker's license and who is responsible for the supervision of the activities of

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licensees associated with the real estate company or a responsible broker who operates a single license office or sole proprietorship;

(li) "~~Salesman~~Salesperson" means an individual who has qualified as a ~~salesman~~salesperson under this act and is licensed by the commission under a responsible broker;

33-28-103. Exemptions.

(a) The provisions of this act shall not apply to:

(vi) Any person or employee acting as the resident manager for the owner or an employee acting as the resident manager for a responsible broker managing an apartment building, duplex, apartment complex or court, when the resident manager resides on the premises and is engaged in the leasing of real estate in connection with his employment, unless that individual is a licensee; or

33-28-105. Creation of commission; membership; terms; removal; chairman; powers and duties; director and duties thereof; other employees; compensation; disposition of fees.

(c) The commission shall employ a director. The director is subject to the rules and regulations of the human resources division of the department of administration and information. The director's salary shall be paid from the real estate commission account specified in subsection (g) of this section. The duties of the director shall include the following:

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(iii) Issue real estate responsible broker, and
salesman—associate broker, salesperson and real estate
company licenses;

(d) The commission shall employ other employees—staff
members to assist in the discharge of the duties imposed
upon it by this act and shall prescribe the duties and fix
the compensation of its employees—staff members, subject to
the rules and regulations of the human resources division
of the department of administration and information. The
office of the commission shall be maintained in Cheyenne
and all files, records and property of the commission shall
at all times remain in the Cheyenne office. No employee of
the commission staff member may be a paid employee of any
real estate association, or group of real estate dealers or
brokers—real estate company or real estate licensee.

**33-28-106. Application for license; qualifications;
sworn statement; commission approval of course of study;
statement of responsible broker; denial of license; issuing
licenses.**

(c) Each applicant for a responsible broker's license
shall:

(ii) Have first served actively for two (2) of
the four (4) years immediately preceding the application as
a real estate salesman—salesperson or associate broker; and

(f) Each applicant for a salesman's—salesperson's
license shall:

(n) Each individual applicant for an associate
broker's license shall:

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(ii) Have first served actively for two (2) of the four (4) years immediately preceding the application as a ~~salesman~~salesperson or shall furnish to the commission proof indicating that ~~he~~the applicant holds a degree in real estate from an accredited university or college; and

33-28-107. Examinations; responsible broker, associate broker and salesperson's licenses.

(a) In addition to proof of honesty, trustworthiness and good reputation, each applicant desiring to become licensed as a real estate responsible broker, associate broker or a real estate ~~salesman~~salesperson shall execute and file an application for examination upon a form prescribed by the commission and shall pass a written examination prepared by or under the supervision of the commission. The examination shall be given at times and at places within the state as the commission shall prescribe. The examination for a ~~salesman's~~salesperson's license shall include business ethics, composition, arithmetic, elementary principles of land economics and appraisal, a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency ~~and brokerage,~~ and the provisions of this act. The ~~examination~~examinations for a responsible broker and associate broker's license~~licenses~~ shall be of a more exacting nature and scope and more stringent than the examination for a ~~salesman's~~salesperson's license.

33-28-108. Fees.

Pursuant to W.S. 33-1-201, the commission shall establish fees for examinations, original licenses, modified licenses, renewals, certifications, change of place of business, and transfers. ~~and duplicate licenses.~~ The fees

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shall be used to pay the expense of maintaining and operating the office of the commission and the enforcement of this act.

33-28-109. Responsible broker to establish a real estate company, maintain fixed principal office; change of address; branch offices; restrictions on associate brokers and salespersons.

(a) Each resident responsible broker shall lawfully establish at least one (1) but no more than three (3) real estate companies or sole proprietorships within Wyoming and acquire a license for each real estate company or sole proprietorship. Each resident responsible broker shall maintain a fixed principal office for each company or sole proprietorship within this state. The address of ~~the~~each office shall be designated on all licenses associated with the office and no license issued under this act shall authorize the licensee to transact real estate activity at any other address except a licensed branch office. In case of removal from ~~the~~a designated address, the responsible broker shall ~~make application~~apply to the commission before the removal designating the new location of ~~his~~an office and paying the required fee, whereupon the commission shall issue a license for the new location for the unexpired period if the new location complies with the terms of this act.

(b) ~~If a responsible broker maintains more than one (1) place of business within the state, a branch office~~ A responsible broker may conduct business from a branch office. A branch office shall use the same trade name or business name as the licensed real estate company. A company license shall be issued to the responsible broker for each branch office ~~so maintained by him~~ the responsible

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broker maintains. Every branch office shall be under the direction and supervision of the responsible broker. A responsible broker requesting a branch office license shall also, in addition to the branch office application, submit a plan of supervision for the branch office for approval by the commission.

(c) An associate broker or ~~salesman~~salesperson shall not be associated or engaged under contract to any other responsible broker than is designated upon the license issued to the associate broker or ~~salesman~~salesperson. Upon termination of an associate broker's or ~~salesman's~~salesperson's association or contractual relationship, his responsible broker shall immediately notify the commission for cancellation of the associate broker's or ~~salesman's~~salesperson's license. Whenever a licensed associate broker or ~~salesman~~salesperson desires to change his contractual relationship from one (1) responsible broker to another, he shall notify the commission promptly in writing of the facts attendant thereon and pay the required fee. Upon application, the commission shall issue a new license under the new responsible broker. No associate broker or ~~salesman~~salesperson shall directly or indirectly associate himself with a responsible broker until he has been issued a license to do so with that responsible broker.

(d) No more than one (1) license to conduct real estate activity shall be issued to any ~~salesman~~responsible broker, associate broker or salesperson to be in effect at one (1) time except as provided in subsection (a) of this section.

33-28-110. Unlawful to compensate unlicensed person; licensing of like-licensed nonresidents; service of process on nonresidents.

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(b) A nonresident may be issued a Wyoming responsible broker's license if:

(iv) The ~~broker~~individual furnishes the commission a statement under seal of the commission of his home state evidencing that he is an active licensed responsible broker, or an equivalent, in good standing and has no complaints pending against him in his home state.

(d) A nonresident may be issued a Wyoming associate broker or ~~salesman~~salesperson license if:

33-28-111. Censure of licensee and suspension or revocation of license; grounds.

(a) The commission shall upon a written sworn complaint or may upon its own motion investigate the actions of any licensee conducting real estate advertising, self promotion as a licensee or real estate activity regarding real estate located in Wyoming, impose an administrative fine not to exceed two thousand five hundred dollars (\$2,500.00) for each separate offense and may censure a licensee, place a licensee on probation and set the terms of probation, suspend or revoke any license issued under this act for any of the following:

(ix) If a responsible broker, failing to supervise the activities of his associate broker or ~~salesman~~salesperson;

(xvi) Engaging in real estate activity as an associate broker or ~~salesman~~salesperson involving the representing or attempt to represent a responsible broker other than his responsible broker or a real estate company

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other than the real estate company under which he is licensed;

(xvii) Accepting compensation by an associate broker or ~~salesman~~ salesperson from anyone other than his responsible broker;

(xxix) If a responsible broker:

(A) Failing to deliver to the parties in every real estate transaction at the time the transaction is closed a complete, detailed closing statement showing all of the receipts and disbursements handled by the licensees in his office for the parties unless a clear and accurate accounting is furnished by another ~~broker~~ real estate licensee or a funds holder;

(D) Failing to disclose, in every real estate transaction, the names of all real estate companies for which a responsible broker holds a license.

33-28-115. Unlicensed person may not maintain action for fee.

No action or suit shall be instituted, nor recovery be had, in any court of this state by any person for compensation for any real estate activity unless the person was licensed by the commission under this act at the time of engaging in real estate activity.

33-28-118. License renewals; continuing education; payment of fees; effect of failure to renew; inactive status.

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(e) Any real estate associate broker or ~~salesman~~ salesperson who is not employed by or associated with a responsible broker, or any responsible broker who desires to become inactive, may renew his license in an inactive status prior to the renewal deadline established in this section, by submitting the renewal fee together with a completed renewal application on which he has noted his present inactive status.

33-28-119. Advertising; licensing under one name; trade names; advertisement of licensees.

(a) Every real estate licensee, when promoting himself as a licensee, advertising or promoting his real estate activities, shall use the real estate company name under which he is licensed by the commission and shall use no slogans or phraseology in a manner which would indicate or suggest to the public that real estate may be listed or is being offered for sale, exchange, lease or rent by a private party not licensed by the commission.

~~(d) Except as provided in subsection (c) of this section, no person shall be licensed under more than one (1) real estate company name, and~~ No person shall conduct or promote a real estate ~~brokerage business except under~~ company other than the real estate company ~~name~~ under which the person or ~~brokerage business company~~ is licensed by the commission.

(e) A trade name, with the permission of the owner of the trade name, may be used concurrently with the licensed name of the real estate company in the promotion or conduct of the responsible broker's business. On promotional materials the real estate company name shall be displayed in a conspicuous manner that the general public may ~~be~~

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~~readily identified by the general public~~ easily identify,
as prescribed in commission rules.

(f) A licensed responsible broker shall not advertise the sale, purchase, exchange or lease of real estate, unless owned by him, without including in the advertisement the real estate company name under which he is licensed by the commission.

(g) A licensed associate broker or salesman salesperson shall not advertise the sale, purchase, exchange or lease of real estate, unless owned by him, without including in the advertisement the ~~name of the~~ real estate company ~~with whom he is associated~~ name under which he is licensed by the commission.

33-28-122. Responsible broker's trust accounts; disposition of interest; commingling with personal funds prohibited; disputed deposits; cooperative transactions.

(a) Every responsible broker licensed by the commission in this state shall comply with the following provisions for each licensed real estate company he supervises:

(i) Maintain ~~a separate~~ an account in a financial institution in this state designated as a trust or escrow account in which all down payments, earnest money deposits, advance listing fees or other trust funds received by him, his associate brokers or his salesmen salespersons on behalf of a principal or any other person shall be deposited unless all persons having an interest in the funds have agreed otherwise in writing. The account shall permit immediate withdrawal of the funds deposited therein. In lieu of maintaining a trust or escrow account

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under this paragraph, a responsible broker may use a funds holder;

33-28-123. Retention of records.

Every responsible broker licensed by the commission in this state shall keep and maintain a full set of records of every real estate transaction in which he participates on behalf of or to assist any party to the transaction. The records shall be maintained not less than seven (7) years from the latest date on which the real estate company participated in the transaction.

33-28-202. Real estate recovery account created; payments; pro rata distribution when account insufficient; service of process; joinder of account.

(a) If any person obtains a final judgment in any court of competent jurisdiction against any licensee on the grounds of fraud, willful misrepresentation, deceit or conversion of trust funds arising directly out of any transaction which occurred when the licensee was licensed by the commission and in which the licensee performed any real estate activity, that person, within one (1) year of termination of all proceedings, including appeals, may file with the commission a verified petition in the court in which the judgment was entered for an order directing payment out of the real estate recovery account in the amount of actual damages included in the judgment and unpaid, and that a writ of execution has been returned unsatisfied, but for not more than ten thousand dollars (\$10,000.00).

33-28-204. Suspension of licenses following payment from account; reinstatement.

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If the commission is required to make any payment from the real estate recovery account in settlement of a claim or toward the satisfaction of a judgment, the commission shall immediately suspend the judgment debtor's license. The judgment debtor shall not be licensed by the commission or have his license reinstated by the commission until he has repaid in full the amount paid from the real estate recovery account with interest thereon of eighteen percent (18%) per annum. Repayment under this section shall not prohibit the commission from acting in accordance with W.S. 33-28-111. A discharge in bankruptcy shall not relieve a person from the disabilities and penalties of the section.

ARTICLE 3
BROKER RELATIONSHIPS

33-28-302. Relationships between licensees and the public.

(a) A responsible broker shall not be required to offer or engage in more than one (1) of the brokerage broker relationships. When engaged in any real estate activity, a licensee, with permission of his—the licensee's responsible broker, may act in any real estate transaction as an agent or intermediary or may work with the seller or buyer as a customer. The licensee's duties and obligations arising from that relationship shall be disclosed to the seller or buyer pursuant to this article.

(h) If a real estate company has more than one (1) licensee, the responsible broker and any licensee associated with or engaged by that responsible broker may be designated to work with the seller or the buyer as a

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designated licensee. For an in-house real estate transaction, the designated licensee shall be:

(iii) A ~~salesman~~salesperson under the direct supervision of a responsible broker, and the responsible broker is not a party to the real estate transaction; or

(iv) A ~~salesman~~salesperson who is under the direct supervision of a transaction manager.

(j) Licensees employed or engaged by the same responsible broker or across any companies the same responsible broker supervises may be designated licensees for different buyers or sellers in the same transaction. If the responsible broker is representing a buyer or a seller in an in-house transaction, the responsible broker shall immediately appoint a transaction manager unless the other licensee is an associate broker. If the responsible broker is representing a buyer or seller in a transaction involving two (2) or more companies the responsible broker manages, he shall immediately appoint a transaction manager for each real estate company unless the other licensee is an associate broker. The responsible broker shall disclose in every real estate transaction to all parties involved the names of all real estate companies the responsible broker supervises. The simultaneous designations shall not constitute dual agency or require the responsible broker or licensee to act as an intermediary unless otherwise required by this article. A responsible broker or transaction manager shall have access to all necessary information but shall be prohibited from sharing any confidential information of any party to the transaction that the responsible broker or transaction manager may learn in the process of supervising the licensees or the transaction.

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33-28-305. Intermediary.

(g) An intermediary may cooperate with other responsible brokers but shall not engage any subagents.

33-28-306. Relationship disclosures.

(b) The written disclosure shall contain a signature line for the buyer or seller to acknowledge receipt of the disclosure. The disclosure and acknowledgment, by itself, shall not constitute a contract or agreement with the licensee. Until the buyer or seller executes such acknowledgment, no representation agreement shall be executed or valid- except, provided if a buyer or seller refuses to sign the disclosure after presentation by the licensee:

(i) The licensee may document the refusal with a signed acknowledgement by the licensee and continue with the transaction; and

(ii) The disclosure and acknowledgement shall be attached to and may become incorporated into any written agreements with the buyer or seller as prescribed in W.S. 33-28-302(b) and (c).

33-28-308. Compensation.

(a) In any real estate transaction, the responsible broker's compensation may be paid by the seller, the buyer, a third party, or by the sharing or splitting of compensation between responsible brokers.

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(b) Payment of compensation shall not be construed to establish an agency relationship or intermediary relationship between the responsible broker and the party who paid the compensation.

(c) A seller may agree that an intermediary, buyer's agent, subagent or a licensee working with a buyer as a customer may share in the compensation paid by the seller with another responsible broker.

(d) A buyer may agree that a seller's agent, intermediary, subagent or a licensee working with a seller as a customer may share in the compensation paid by the buyer with another responsible broker.

(f) Prior to entering into a written agreement with the seller and buyer, or prior to entering into a contract to buy or sell, the responsible broker shall disclose in writing to the seller and buyer to the transaction, the agency, intermediary or customer relationships of all parties, persons and entities paying compensation to the responsible broker.

(g) A responsible broker may be compensated by more than one (1) party for services in a transaction, if those parties have consented in writing to the shared payment prior to seller and buyer entering into a contract to buy or sell.

(h) An agreement authorizing a responsible broker who originally agreed in writing to act as an agent to a buyer or seller with respect to a particular real estate transaction to act instead as an intermediary to that party, shall provide that the party agreeing to the new relationship shall not be liable for any compensation

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greater than the compensation the party would have been liable to pay under the initial agreement. Any contract provision in violation of this subsection is void and unenforceable.

33-28-310. Licensees working with buyers and sellers as customers; duties; exceptions.

(e) A licensee working with a buyer or seller who is a customer shall provide the customer an agency disclosure.

Section 2. W.S. 33-28-102(b)(vii) is repealed.

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Section 3. This act is effective July 1, 2017.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk