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REAL ESTATE EXAMINERS, BOARD OF—NO AUTHORITY TO PROVIDE FOR REINSTATEMENT OF BROKER'S LICENSE WITHOUT EXAMINATION—IF LICENSE EXPIRED, i. e., NOT RENEWED BEFORE DECEMBER 31 OF YEAR OF ISSUANCE—EXCEPTION, INSTANCES WHERE BOARD FOR GOOD CAUSE SHOWN DETERMINES RENEWAL COULD NOT HAVE BEEN MADE BY DECEMBER 31 BUT IS FILED WITHIN 15 DAYS OF SAID DATE AND UPON PAYMENT OF 50% PENALTY.

SYLLABUS:

The board of real estate examiners is without authority to provide for the reinstatement of a broker's license without examination if the broker's license has been allowed to expire pursuant to Section 6373-38 of the General Code, that is, if the license is not renewed before the 31st day of December of the year of issuance, except in those instances where the board for good cause shown determines that such renewal could not have been made by the 31st day of December, but is filed within 15 days of said date and upon payment of a 50% penalty.

Columbus, Ohio, November 22, 1950

Mr. L. F. Waldbauer, Secretary, Board of Real Estate Examiners
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The following resolution was passed by the Board on September 22, 1948:

“ ‘Resolved that if a broker surrenders his license to become a salesman with a salesman's license, that he may be reinstated as

a broker at any time without an examination by paying the fee for a broker's license provided that he is a licensed salesman at time of making application for reinstatement.'

"The question has arisen as to whether the Board, under Section 6373-33, G. C. Ohio, has the power to pass such a resolution, as Section 6373-30, G. C. Ohio, stipulates that ' * * * Every applicant or such person shall be examined in the principles of real estate practice and as to the duties of real estate brokers and salesmen, as to applicant's knowledge of real estate transactions and instruments relating thereto, and the canons of business ethics pertaining thereto. * * * '

"May we have your opinion as to the legality of this resolution?"

Section 6373-29 of the General Code gives the requirements and procedure for obtaining a real estate broker's license.

Section 6373-30 of the General Code provides, among other things, for the examination of applicants for a real estate broker's license. The pertinent part of this statute, relative to your inquiry, reads as follows:

" * * * Each applicant or other such person shall be examined in the principles of real estate practice and as to the duties of real estate brokers and real estate salesmen, and as to applicant's knowledge of real estate transactions and instruments relating thereto, * * * "

Section 6373-38 of the General Code provides for the renewal of licenses of real estate salesmen and brokers. The section reads as follows:

"Each license issued under this act shall expire on the 31st day of December of the year in which it is issued; but each license shall be renewed upon application therefor, without recommendation or examination, if made not later than the 31st day of December of the year in which the licenses were issued. Any broker or salesman failing to do so shall be subject to all the requirements of this act applicable to persons who have never been licensed." * * *

Your inquiry poses the question as to whether the Board of Real Estate Examiners can, by resolution of the board, permit a "reinstatement" of a real estate broker's license to a person who relinquished it to become a salesman with a salesman's license, without re-examination for such reinstatement as a broker.

From the above quoted sections of the General Code, it is clearly set out that a person applying originally for a broker's license must take an

examination based on the provisions of Section 6373-30. This section is mandatory in nature and provides for the basic requirements for obtaining such a broker's license.

Once having obtained a broker's license, the person so obtaining the license is governed by the other sections of the Code relative to expiration, renewal and fees, as well as rules of conduct. In answering your inquiry, we are confined to the Code provisions for renewal of a broker's license.

Section 6373-38, General Code, clearly states the law on a renewal of broker's and salesmen's licenses. It provides that unless an application for renewal is made not later than the 31st day of December of the year for which issued, the license shall expire. It further provides that for failure to so apply for and obtain such a renewal, any salesman or broker shall be subject to all the requirements of this act applicable to persons who have never been licensed.

There is no provision anywhere for "reinstatement" of a license of broker or salesman. The only provision is for renewal, and this is covered by statute in Section 6373-38.

It would appear from your communication quoting the resolution of the Board passed September 22, 1948, that the Board has attempted to circumvent the statute providing for expiration and renewal. This the Board cannot do by resolution. Any modification of existing statutes must be made by legislative action. It is clear from the wording of the resolution that it attempts to provide for a renewal of an expired broker's license without fulfilling the conditions set out in Section 6373-38, by providing for a reissuance of an expired broker's license without re-examination.

Therefore, it is my opinion that the Board of Real Estate Examiners is without authority to provide for the reinstatement of a broker's license without examination if the broker's license has been allowed to expire pursuant to Section 6373-38 of the General Code, that is, if the license is not renewed before the 31st day of December of the year of issuance, except in those instances where the Board for good cause shown determines that such renewal could not have been made by the 31st day of December, but is filed within 15 days of said date and upon payment of a 50% penalty.

Respectfully,

HERBERT S. DUFFY,
Attorney General.