

ORDINANCE NO. 400

AN ORDINANCE DEFINING, REGULATING AND GOVERNING REAL ESTATE BROKERS AND REAL ESTATE SALESMEN WITHIN THE LIMITS OF MIAMI BEACH, FLORIDA; REQUIRING THE DEPOSIT BY APPLICANTS OF NECESSARY OCCUPATIONAL LICENSE FEES AND THE EXAMINATION OF ALL SUCH REAL ESTATE BROKERS AND REAL ESTATE SALESMEN; PRESCRIBING THE TIME WHEN SUCH EXAMINATIONS SHALL BE CONDUCTED; CREATING A BOARD OF EXAMINERS FOR REAL ESTATE BROKERS AND/OR SALESMEN; DEFINING THE DUTIES AND POWERS OF THE BOARD; AND PROVIDING PENALTIES FOR THE VIOLATION OF THIS ORDINANCE.

BE IT ORDAINED BY THE CITY COUNCIL OF MIAMI BEACH, FLORIDA:

DEFINITIONS

SECTION 1: (a) Every person, partnership or corporation who shall, in this State, for another, and for a compensation or valuable consideration, directly or indirectly, paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor, appraise, auction, sell, exchange, buy or rent, or offer, attempt or agree to appraise, auction, or negotiate the sale, exchange, purchase or rental of any real property, or any interest in or concerning the same, including mineral rights or leases, or who shall advertise or hold out to the public by any oral or printed solicitation or representation that such person, partnership or corporation is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing or renting real estate, or interests therein, including mineral rights or leases, of others; and every person, partnership or corporation who shall take any part in the procuring of sellers, purchasers, lessors or lessees of the real property, or interests therein, including mineral rights or leases, of another, or who shall direct or assist in the procuring of prospects, or the negotiation or closing of any transaction, which does, or is calculated to, result in a sale, exchange or leasing thereof, and who shall receive, expect or be promised any compensation or valuable consideration, directly or indirectly therefor, and all persons who are members of partnerships or officers or directors of corporations, engaged in performing any of the aforesaid acts or services, each and every such person, partnership or corporation shall be deemed and held to be a "Real Estate Broker" or a "Real Estate Salesman", as hereinafter classified, unless said person, partnership or corporation when performing the act or acts specified shall be acting as an attorney in fact for the purpose of the execution of contracts or conveyances only, or as an attorney at law within the scope of his duties as such, or when acting as the administrator, executor, receiver, trustee, or master under or by virtue of an appointment by will or by order of a court of competent jurisdiction, or as trustee under a deed of trust, or under a trust agreement the ultimate purpose and intent whereof shall be charitable, philanthropic, or providing for those

having a natural right to the bounty of the donor or trustor; nor shall the term broker or salesman be applied to a person, partnership or corporation who shall deal with property in which he or it is a part owner, unless said person, partnership or corporation shall receive a larger share of the proceeds of profits from the transaction than he or its proportional investment therein would otherwise justify, such excess share being directly or indirectly the result of the service of buying, selling, exchanging or leasing said property; nor shall said terms be applied to one officer of every corporation engaged in the sale of its own properties, who shall be its president unless otherwise provided in its charter or by-laws, if said corporation shall not otherwise be classed as a real estate broker or salesman, nor shall this ordinance be construed to prevent a regularly licensed contractor from acting as an appraiser of any building or structure.

(b) Every person, partnership or corporation who comes within the meaning of the preceding subsection, and shall not be within the exceptions named, and whose business policies and acts are free from the direction, control or management of another person, partnership or corporation, and all members of a partnership, and all officers and directors of a corporation, which partnership or corporation is defined by this subsection to be a real estate broker, shall be deemed and held to be operating as real estate brokers; and every other person, partnership or corporation who shall come within the terms "Real Estate Broker" or "Real Estate Salesman" as defined in the preceding subsection, shall be deemed and held to be operating as real estate salesmen.

SECTION 2: Within fifteen (15) days after this ordinance becomes effective there shall be appointed by the City Manager, with the approval of the City Council a Board of Examiners of real estate brokers and salesmen consisting of five members who have been Real Estate Brokers of the City of Miami Beach, Florida, for at least one (1) year prior to their appointment. The members of the Board shall be appointed for one (1), two (2), three (3), four (4) and five (5) years, respectively, the term of office expiring on the 31st day of October of said years. Thereafter the City Manager in a like manner shall appoint, to fill the vacancy caused by the expiration of the term of office, a member for a term of five years. If vacancies occur in the Board by removal of a member from said City or for any other cause, the same shall be filled by appointment as above. Each member shall hold over after the expiration of his term, until his successor has been appointed and qualified. Any member of the Board may be removed from office by the City Manager for misconduct, incompetency, or neglect of duty, provided, however, such member removed by the City Manager may have a hearing and his case reviewed before the City Council on written request by said removed officer, made within ten (10) days after notice of said removal has been given said members.

SECTION 3: Each member of the Board shall, before entering upon the discharge of his duties, prepare and file with the City Clerk an oath in writing to properly perform the duties of the office as a member of said Board, and to uphold the laws of the City of Miami Beach, the Constitution and laws of the State of Florida and of the United States.

SECTION 4: The Board shall meet twice each year, once during the period from April 15th to the 30th, and once during the period from October 15th to 31st, or at such other times as a majority of the Board, or the City Council may find necessary or advisable, for the purpose of

making examinations and transacting such other business as may properly come before it. At the October meeting in each year they shall elect officers to serve for a term of one (1) year. These officers shall be a Chairman, a Vice-Chairman and a Secretary-Treasurer. The Board shall have the power to make such by-laws, rules and regulations governing its body as it may deem necessary, providing the same does not conflict with the laws of the City of Miami Beach and the State of Florida. Three (3) members shall constitute a quorum. Special meetings may be called by the Chairman on the first Tuesday of any month for the purpose of transacting any business which may not properly be held over to a regular meeting, and to consider violations of this ordinance.

SECTION 5: The Secretary-Treasurer shall keep a record of all the proceedings of the Board, together with the necessary registers showing all applications for examination and licenses, showing thereon for each the date of application, name, place of business, place of residence, and whether the application was granted or refused; he shall receive all moneys derived from the operation of this ordinance and shall deposit same with the City Clerk for the City of Miami Beach. The books and registers of this Board shall be prima facie evidence of all matters recorded therein. The Secretary-Treasurer shall also prepare a roster of all licensed real estate brokers and salesmen after the April and October meetings, and such other special meetings as may be held from time to time, and file same with the City Clerk and License Bureau of the City of Miami Beach. It shall be his duty to promptly notify these offices in case of revocation or reissuing of a license.

SECTION 6: Hereafter, any one desiring to be licensed as a real estate broker or real estate salesman in the City of Miami Beach shall make application to the Board of Examiners by filling in the printed forms which shall be provided to applicants by the Secretary-Treasurer of said Board or the City Clerk, and depositing with the said City Clerk of the necessary Occupational License Fee. Each application shall state the length of time the applicant shall have resided in Dade County, Florida. An applicant for license as real estate broker must have resided in Dade County, Florida, for at least one (1) year. An applicant for license as a real estate salesman must have resided in Dade County, Florida, for at least ninety (90) days. After qualifying, the applicant shall then be entitled to an examination to determine his or her qualifications as a real estate broker or real estate salesman as the case may be, of property in the City of Miami Beach.

If the result of the examination is satisfactory, the Board shall issue a certificate to the City Clerk of the City of Miami Beach, who shall then issue a license to the applicant. If the result of the examination is unsatisfactory, the Board shall so advise the City Clerk, who shall forthwith return to the applicant the fee deposited.

Licenses shall expire on the 31st day of October, following the issuance or renewal, and shall become invalid after that date, and unless renewed within ten (10) days thereafter the holder of such license may, in the discretion of the Board, be required to be re-examined.

SECTION 7: The Board shall have the power to revoke the license of any real estate broker or real estate salesman licensed under this ordinance who shall be guilty of any one or more of the following acts or omissions:

- (a) Fraud or deceit in obtaining license.
- (b) Negligence, incompetency or misconduct in the practice of the profession of real estate broker or real estate salesman.
- (c) Diversion of funds or property received under express agreement and for a specific purpose, and its application or use for any other purpose.
- (d) Fraudulent departure from or disregard of instructions or authority given by employer or principal or such real estate broker or real estate salesman, or the doing of any wilful fraudulent act by such broker or salesman in consequence of which another is substantially injured.

Any person directly interested, or the Board on its own initiative may prefer charges against a licensee under this ordinance. Such charges, if made by an individual, must be made in writing, sworn to by the complainant, and submitted to the Board. It will then be the duty of the Board, at the earliest possible date, and not later than thirty (30) days thereafter, to investigate the charges and render its decision without delay. Other charges unless dismissed by the Board as unfounded or trivial, shall be heard and determined within thirty (30) days after the date preferred. A copy of the charges together with the time and place of hearing, shall be served on the accused, either personally or by registered mail at least five (5) days before the date fixed for the hearing. At the hearing, the accused shall have the right to appear personally and by counsel, and cross-examine the witnesses against him or her and to produce witnesses and evidence in his or her defense.

If, after the hearing, the Board's decision be that the licensee has been guilty of the charges preferred against him or her, the Board shall suspend and cancel the license of said licensee.

The Board may reissue a license to any person whose license has been revoked for reasons the Board may deem sufficient, provided at least four (4) members of the Board vote in favor of such reissuance.

Prompt notice shall be given the City Clerk and the License Bureau of the City of Miami Beach in the case of revocation or the reissuing of a license.

Appeal from the decision of the Board of Examiners shall be to the City Council, provided notice of said appeal is given to said City Council, and the Secretary-Treasurer of said Board within five (5) days after the date of said decision.

SECTION 8: This ordinance shall not apply to: (A) Insofar as to examination, to any person having a license as a real estate broker or real estate salesman within the meaning of this ordinance, in the City of Miami Beach, for three (3) months immediately prior to the passage of this ordinance. (B) Sole owners of property, selling or leasing their own property.

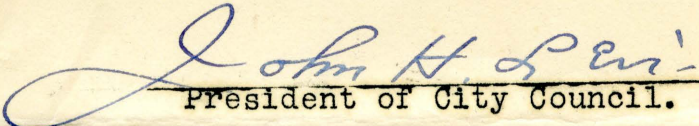
SECTION 9: Any person who, after this ordinance has become a law, attempts to engage in or practice the profession of real estate broker or real estate salesman, before obtaining a license as provided for in this ordinance, and any person presenting or attempting to file as his own the license of another, or who shall give false or forged evidence of any kind to the Board or any members thereof in obtaining or maintaining a license, or who shall falsely impersonate another, or who shall use an expired or revoked

license, or who shall violate any of the terms of this ordinance, shall upon conviction be deemed guilty of a misdemeanor, and shall for each offense of which he or she is found guilty, be punished by a fine of not more than Two Hundred Dollars (\$200.00) or imprisonment in the City Jail for not more than thirty (30) days, or both in the discretion of the Court.

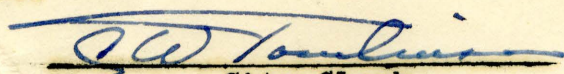
SECTION 10: If any section, sub-section, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed the remainder of this ordinance and each section, sub-section, sentence, clause and phrase thereof irrespective of the fact that any one or more of the sections, sub-sections, sentences, clauses or phrases be declared unconstitutional.

SECTION 11: All ordinances and parts of ordinances of the City of Miami Beach, in conflict with the provisions of this ordinance, shall be and the same are hereby repealed.

PASSED AND ADOPTED this 2nd day of October, A. D., 1935.


President of City Council.

ATTEST:


City Clerk

APPROVED BY ME THIS 8th day of October, A. D., 1935.


Mayor

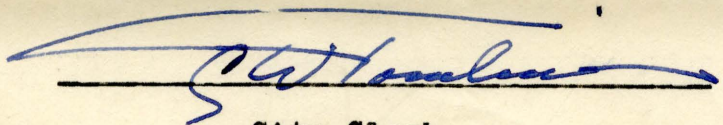
1st Reading, September 18th, 1935.
2nd Reading, September 18th, 1935.
3rd Reading, October 2nd, 1935.
Posted - October 8th, 1935.



STATE OF FLORIDA)
COUNTY OF DADE)

I, C. W. TOMLINSON, City Clerk in and for the City of Miami Beach, Florida, do hereby certify that Ordinance No. 400 entitled " AN ORDINANCE DEFINING, REGULATING AND GOVERNING REAL ESTATE BROKERS AND REAL ESTATE SALESMEN WITHIN THE LIMITS OF MIAMI BEACH, FLORIDA; REQUIRING THE DEPOSIT BY APPLICANTS OF NECESSARY OCCUPATIONAL LICENSE FEES AND THE EXAMINATION OF ALL SUCH REAL ESTATE BROKERS AND REAL ESTATE SALESMEN; PRESCRIBING THE TIME WHEN SUCH EXAMINATIONS SHALL BE CONDUCTED; CREATING A BOARD OF EXAMINERS FOR REAL ESTATE BROKERS AND/OR SALESMEN; DEFINING THE DUTIES AND POWERS OF THE BOARD; AND PROVIDING PENALTIES FOR THE VIOLATION OF THIS ORDINANCE" having been duly passed and adopted by the City Council of the City of Miami Beach, Florida, has been posted by me in three conspicuous places in the City of Miami Beach, one of which was at the door of the City Hall in said City on the 8th day of October, A. D., 1935, and that said ordinance remained posted for a period of at least thirty days in accordance with the requirements of the City Charter of the said City of Miami Beach.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Miami Beach, Florida, on this the 9th day of November, A.D., 1935.




City Clerk



STATE OF FLORIDA)
)
COUNTY OF DADE)

I, C. W. TOMLINSON, City Clerk in and for the City of Miami Beach, Florida, do hereby certify that Ordinance No. 400 entitled "AN ORDINANCE DEFINING, REGULATING AND GOVERNING REAL ESTATE BROKERS AND REAL ESTATE SALESMEN WITHIN THE LIMITS OF MIAMI BEACH, FLORIDA; REQUIRING THE DEPOSIT BY APPLICANTS OF NECESSARY OCCUPATIONAL LICENSE FEES AND THE EXAMINATION OF ALL SUCH REAL ESTATE BROKERS AND REAL ESTATE SALESMEN; PRESCRIBING THE TIME WHEN SUCH EXAMINATIONS SHALL BE CONDUCTED; CREATING A BOARD OF EXAMINERS FOR REAL ESTATE BROKERS AND/OR SALESMEN; DEFINING THE DUTIES AND POWERS OF THE BOARD; AND PROVIDING PENALTIES FOR THE VIOLATION OF THIS ORDINANCE", having been duly passed and adopted by the City Council of the City of Miami Beach, Florida, has been posted by me in three conspicuous places in the City of Miami Beach, one of which was at the door of the City Hall in said City on the 8th day of October, A. D., 1935, and that said ordinance remained posted for a period of at least thirty days in accordance with the requirements of the City Charter of the said City of Miami Beach.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Miami Beach, Florida, on this the 18th day of November, A. D., 1935.



City Clerk



ORDINANCE NO. 400

*Regulating &
governing Coal
Cotate Shakers and
Salem.*