

LEGISLATIVE BILL 30

Approved by the Governor February 12, 2009

Introduced by Pahls, 31.

FOR AN ACT relating to the Nebraska Real Estate License Act; to amend sections 81-885.02, 81-885.05, 81-885.09, 81-885.10, 81-885.15, 81-885.24, 81-885.25, 81-885.29, 81-885.43, 81-885.44, 81-885.46, 81-885.48, and 81-887.03, Reissue Revised Statutes of Nebraska; to change provisions relating to the act and the powers of the State Real Estate Commission as prescribed; to provide for civil penalties; to provide powers and duties for the Attorney General; to harmonize provisions; to repeal the original sections; and to outright repeal section 81-885.47, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 81-885.01 to 81-885.55 and sections 1 and 10 of this act shall be known and may be cited as the Nebraska Real Estate License Act.

Sec. 2. Section 81-885.02, Reissue Revised Statutes of Nebraska, is amended to read:

81-885.02 After September 2, 1973, it shall be unlawful for any person, directly or indirectly, to engage in or conduct, or to advertise or hold himself or herself out as engaging in or conducting the business, or acting in the capacity, of a real estate broker, associate broker, or real estate salesperson within this state without first obtaining a license as such broker, associate broker, or salesperson, as provided in ~~sections 81-885.01 to 81-885.48,~~ the Nebraska Real Estate License Act, unless he or she is exempted from obtaining a license under section 81-885.04.

Sec. 3. Section 81-885.05, Reissue Revised Statutes of Nebraska, is amended to read:

81-885.05 ~~Sections 81-885.01 to 81-885.48~~ The Nebraska Real Estate License Act shall not apply to railroads and other public utilities regulated by the State of Nebraska, or their subsidiaries or affiliated corporations, or to the officers or regular employees thereof, unless performance of any of the acts described in subdivision (2) of section 81-885.01 is in connection with the sale, purchase, lease, or other disposition of real estate or investment therein unrelated to the principal business activity of such railroad or other public utility or affiliated or subsidiary corporation thereof.

Sec. 4. Section 81-885.09, Reissue Revised Statutes of Nebraska, is amended to read:

81-885.09 The Attorney General shall render to the State Real Estate Commission opinions on all questions of law relating to the interpretation of ~~sections 81-885.01 to 81-885.48~~ the Nebraska Real Estate License Act or arising in the administration thereof, and shall act as attorney for the commission in all actions and proceedings brought by or against it under or pursuant to ~~any of the provisions of sections 81-885.01 to 81-885.48,~~ the act. All fees and expenses of the Attorney General arising out of such duties shall be paid out of the State Real Estate Commission's Fund.

Sec. 5. Section 81-885.10, Reissue Revised Statutes of Nebraska, is amended to read:

81-885.10 The commission shall have the full power to regulate the issuance of licenses and the activities of licensees and to revoke or suspend licenses issued under the ~~provisions of sections 81-885.01 to 81-885.48,~~ Nebraska Real Estate License Act, to censure licensees, and to enter into consent decrees. The commission may, alone or in combination with such disciplinary actions, impose a civil fine on a licensee for each violation alleged in a complaint for which the commission has made a finding of guilt, except that the total fine for such violations shall not exceed two thousand five hundred dollars per complaint.

Sec. 6. Section 81-885.15, Reissue Revised Statutes of Nebraska, is amended to read:

81-885.15 All fees collected under ~~sections 81-885.01 to 81-885.48~~ the Nebraska Real Estate License Act shall be deposited in the state treasury in a fund to be known as the State Real Estate Commission's Fund. The commission may use such part of the money in this fund as is necessary to be used by it in the administration and enforcement of ~~sections 81-885.01 to 81-885.48,~~ the act. The fund shall be paid out only upon proper vouchers and upon warrants issued by the Director of Administrative Services and countersigned by the State Treasurer, as provided by law. The expenses of conducting the office must always be kept within the income collected and

deposited with the State Treasurer by such commission and such office, and the expense thereof shall not be supported or paid from any other state fund. Any money in the State Real Estate Commission's Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 7. Section 81-885.24, Reissue Revised Statutes of Nebraska, is amended to read:

81-885.24 The commission may, upon its own motion, and shall, upon the sworn complaint in writing of any person, investigate the actions of any broker, associate broker, salesperson, or subdivider, and may censure the licensee or certificate holder, revoke or suspend any license or certificate issued under the Nebraska Real Estate License Act, or enter into consent orders, and, alone or in combination with such disciplinary actions, may impose a civil fine on a licensee pursuant to section 81-885.10, whenever the license or certificate has been obtained by false or fraudulent representation or the licensee or certificate holder has been found guilty of any of the following unfair trade practices:

(1) Refusing because of religion, race, color, national origin, ethnic group, sex, familial status, or disability to show, sell, or rent any real estate for sale or rent to prospective purchasers or renters;

(2) Intentionally using advertising which is misleading or inaccurate in any material particular or in any way misrepresents any property, terms, values, policies, or services of the business conducted;

(3) Failing to account for and remit any money coming into his or her possession belonging to others;

(4) Commingling the money or other property of his or her principals with his or her own;

(5) Failing to maintain and deposit in a separate non-interest-bearing checking account all money received by a broker acting in such capacity, or as escrow agent or the temporary custodian of the funds of others, in a real estate transaction unless all parties having an interest in the funds have agreed otherwise in writing;

(6) Accepting, giving, or charging any form of undisclosed compensation, consideration, rebate, or direct profit on expenditures made for a principal;

(7) Representing or attempting to represent a real estate broker, other than the employer, without the express knowledge and consent of the employer;

(8) Accepting any form of compensation or consideration by an associate broker or salesperson from anyone other than his or her employing broker without the consent of his or her employing broker;

(9) Acting in the dual capacity of agent and undisclosed principal in any transaction;

(10) Guaranteeing or authorizing any person to guarantee future profits which may result from the resale of real property;

(11) Placing a sign on any property offering it for sale or rent without the written consent of the owner or his or her authorized agent;

(12) Offering real estate for sale or lease without the knowledge and consent of the owner or his or her authorized agent or on terms other than those authorized by the owner or his or her authorized agent;

(13) Inducing any party to a contract of sale or lease to break such contract for the purpose of substituting, in lieu thereof, a new contract with another principal;

(14) Negotiating a sale, exchange, listing, or lease of real estate directly with an owner or lessor if he or she knows that such owner has a written outstanding listing contract in connection with such property granting an exclusive agency or an exclusive right to sell to another broker or negotiating directly with an owner to withdraw from or break such a listing contract for the purpose of substituting, in lieu thereof, a new listing contract;

(15) Discussing or soliciting a discussion of, with an owner of a property which is exclusively listed with another broker, the terms upon which the broker would accept a future listing upon the expiration of the present listing unless the owner initiates the discussion;

(16) Violating any provision of sections 76-2401 to 76-2430;

(17) Soliciting, selling, or offering for sale real estate by offering free lots or conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real estate;

(18) Providing any form of compensation or consideration to any person for performing the services of a broker, associate broker, or salesperson who has not first secured his or her license under the Nebraska Real Estate License Act unless such person is (a) a nonresident who is

licensed in his or her resident regulatory jurisdiction or (b) a citizen and resident of a foreign country which does not license persons conducting the activities of a broker and such person provides reasonable written evidence to the Nebraska broker that he or she is a resident citizen of that foreign country, is not a resident of this country, and conducts the activities of a broker in that foreign country;

(19) Failing to include a fixed date of expiration in any written listing agreement and failing to leave a copy of the agreement with the principal;

(20) Failing to deliver within a reasonable time a completed and dated copy of any purchase agreement or offer to buy or sell real estate to the purchaser and to the seller;

(21) Failing by a broker to deliver to the seller in every real estate transaction, at the time the transaction is consummated, a complete, detailed closing statement showing all of the receipts and disbursements handled by such broker for the seller, failing to deliver to the buyer a complete statement showing all money received in the transaction from such buyer and how and for what the same was disbursed, and failing to retain true copies of such statements in his or her files;

(22) Making any substantial misrepresentations;

(23) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts;

(24) Failing by an associate broker or salesperson to place, as soon after receipt as practicable, in the custody of his or her employing broker any deposit money or other money or funds entrusted to him or her by any person dealing with him or her as the representative of his or her licensed broker;

(25) Filing a listing contract or any document or instrument purporting to create a lien based on a listing contract for the purpose of casting a cloud upon the title to real estate when no valid claim under the listing contract exists;

(26) Violating any rule or regulation adopted and promulgated by the commission in the interest of the public and consistent with the Nebraska Real Estate License Act;

(27) Failing by a subdivider, after the original certificate has been issued, to comply with all of the requirements of the Nebraska Real Estate License Act;

(28) ~~The broker or salesperson has been convicted~~ Conviction of a felony or ~~entered entering~~ a plea of guilty or nolo contendere to a felony charge by a broker or salesperson;

(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson, whether of the same or of a different character as otherwise specified in this section; or

(30) Inducing or attempting to induce a person to transfer an interest in real property, whether or not for monetary gain, or discouraging another person from purchasing real property, by representing that (a) a change has occurred or will or may occur in the composition with respect to religion, race, color, national origin, ethnic group, sex, familial status, or disability of the owners or occupants in the block, neighborhood, or area or (b) such change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood, or area.

Sec. 8. Section 81-885.25, Reissue Revised Statutes of Nebraska, is amended to read:

81-885.25 (1) Before the commission censures a licensee, imposes a civil fine, or before revoking or suspending ~~revokes or suspends~~ a license, the commission shall send to the licensee a copy of the complaint by certified mail which contains the charges against the licensee and, unless the licensee waives the right to a hearing and has executed a consent order, give the licensee a hearing on the matter.

(2) The license holder shall have full authority to be heard in person or by counsel before the commission in reference to such charges. The commission shall, at least twenty days prior to the date set for hearing, notify the licensee in writing of the date and place of the hearing. Such notice may be served by delivering it personally to the license holder or by sending it by either registered or certified mail to the last-known business address of such license holder. If the license holder is an associate broker or a salesperson, the commission shall also notify the broker employing the license holder by mailing a copy of such notice to the broker's last-known business address.

Sec. 9. Section 81-885.29, Reissue Revised Statutes of Nebraska, is amended to read:

81-885.29 After the hearing the commission shall state in writing, officially signed by the chairperson and attested to by the director, its findings and determination and its order in the matter. If the commission determines that the license holder has been guilty of any violation of the Nebraska Real Estate License Act or the rules and regulations of the commission, ~~his or her license shall be revoked or suspended forthwith or~~ the commission may revoke or suspend the license, enter an order censuring the license holder, or impose a civil fine pursuant to section 81-885.10. The execution of a penalty of suspension may be stayed by the commission and the licensee may be placed on probation for the suspension period, after satisfactory completion of which his or her license shall be fully reinstated. Any violation of the act or the rules and regulations by the licensee during the period of probation shall cause the immediate execution of the suspension penalty.

Sec. 10. (1) All civil fines collected pursuant to the Nebraska Real Estate License Act shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(2) Any civil fine imposed pursuant to the act which remains unpaid for more than sixty days shall constitute a debt to the State of Nebraska which may be recovered by the Attorney General, along with reasonable attorney's fees and court costs, in a proper form of action in the name of the state in the district court of the county in which the violator resides. The commission shall consider such debt to be grounds for denial, refusal to renew, or refusal to reinstate a license under the act or grounds for additional disciplinary action by the commission.

Sec. 11. Section 81-885.43, Reissue Revised Statutes of Nebraska, is amended to read:

81-885.43 ~~Whenever,~~ Except as provided in subsection (2) of section 10 of this act, whenever, in the judgment of the commission, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of ~~sections 81-885.01 to 81-885.48,~~ the Nebraska Real Estate License Act, the Attorney General may maintain an action in the name of the State of Nebraska, in the district court of the county ~~wherein in which~~ such violation or threatened violation occurred, to abate and temporarily and permanently enjoin such acts and practices and to enforce compliance with ~~sections 81-885.01 to 81-885.48,~~ the act. The plaintiff shall not be required to give any bond nor shall any court costs be adjudged against the plaintiff.

Sec. 12. Section 81-885.44, Reissue Revised Statutes of Nebraska, is amended to read:

81-885.44 The commission by and through its director may prefer a complaint for violation of ~~sections 81-885.01 to 81-885.48,~~ the Nebraska Real Estate License Act.

Sec. 13. Section 81-885.46, Reissue Revised Statutes of Nebraska, is amended to read:

81-885.46 Any real estate license or subdivision certificate issued prior to September 2, 1973, shall, for purposes of renewal, be considered to have been originally issued under the ~~provisions of sections 81-885.01 to 81-885.48,~~ Nebraska Real Estate License Act.

Sec. 14. Section 81-885.48, Reissue Revised Statutes of Nebraska, is amended to read:

81-885.48 ~~The~~ Except for purposes of section 81-885.04, the terms employ, employed, employer, or employee as used in ~~sections 81-885.01 to 81-885.03 and 81-885.05 to 81-885.47,~~ the Nebraska Real Estate License Act shall not necessarily be construed to imply an employer and employee relationship. The use of such terms shall not prohibit the establishment of any independent contract or other relationship between a business and an individual, between individuals, or between businesses, including an employer and employee relationship.

Sec. 15. Section 81-887.03, Reissue Revised Statutes of Nebraska, is amended to read:

81-887.03 Nothing contained in sections 81-887.01 to 81-887.03 shall be construed to permit any person to conduct a sale of real estate without first complying with the requirements of ~~sections 81-867 to 81-887,~~ the Nebraska Real Estate License Act.

Sec. 16. Original sections 81-885.02, 81-885.05, 81-885.09, 81-885.10, 81-885.15, 81-885.24, 81-885.25, 81-885.29, 81-885.43, 81-885.44, 81-885.46, 81-885.48, and 81-887.03, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 17. The following section is outright repealed: Section 81-885.47, Reissue Revised Statutes of Nebraska.