

LEGISLATIVE BILL 109

Approved by the Governor February 15, 1985

Introduced by Barrett, 39

AN ACT relating to the State Real Estate Commission; to amend section 81-885.45, Reissue Revised Statutes of Nebraska, 1943, and section 81-885.24, Revised Statutes Supplement, 1984; to provide an additional unfair trade practice; to prohibit acting as a broker, salesperson, or subdivider under a suspended license; and to repeal the original sections.

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

Section 1. That section 81-885.24, Revised Statutes Supplement, 1984, be amended to read as follows:

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 shall have power to censure the licensee or certificate holder or to revoke or suspend any license or certificate, issued under ~~sections 81-885-01 to 81-885-48~~ the Nebraska Real Estate License Act, or enter into consent decrees, 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 race, color, national origin, or ethnic group 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 noninterest-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 undisclosed commission, 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 a commission or other valuable 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; ~~granting an exclusive agency or an exclusive right to sell to himself or herself or his or her employing broker;~~

(15) Discussing or soliciting a discussion 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;

~~(15)~~ (16) Accepting employment or compensation for appraising real estate contingent upon the reporting of a predetermined value or issuing an appraisal report on real estate in which he or she has an undisclosed interest;

~~(16)~~ (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;

~~(17)~~ (18) Paying a commission or compensation to any person for performing the services of a broker, associate broker, or salesperson who has not first secured his or her license under sections 81-885-01 to 81-885-48 the Nebraska Real Estate License Act unless such person is a nonresident who is licensed in his or her state of

residence;

~~(18)~~ (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;

~~(19)~~ (20) Failing to deliver within a reasonable time a completed copy of any purchase agreement or offer to buy or sell real estate to the purchaser and to the seller;

~~(20)~~ (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;

~~(21)~~ (22) Making any substantial misrepresentations;

~~(22)~~ (23) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts;

~~(23)~~ (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;

~~(24)~~ (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;

~~(25)~~ (26) Violating any rule or regulation promulgated by the commission in the interest of the public and consistent with the provisions of sections 81-885-01 to 81-885-48 Nebraska Real Estate License Act;

~~(26)~~ (27) Failing by a subdivider, after the original certificate has been issued, to comply with all of the requirements of sections 81-885-01 to 81-885-48 the Nebraska Real Estate License Act;

~~(27)~~ (28) The broker or salesperson has been convicted of a felony or entered a plea of guilty or nolo contendere to a felony charge;

~~(28)~~ (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 hereinbefore specified; or

~~(29)~~ (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,

age, sex, or marital status 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. 2. That section 81-885.45, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.45. Any person or subdivider acting as a broker, salesperson, or subdivider without having first obtained the required license, or while his or her license is under suspension shall be guilty of a Class II misdemeanor.

Sec. 3. That original section 81-885.45, Reissue Revised Statutes of Nebraska, 1943, and section 81-885.24, Revised Statutes Supplement, 1984, are repealed.