

LEGISLATIVE BILL 238

Approved by the Governor February 18, 1981

Introduced by Goodrich, 20

AN ACT to amend sections 81-885.26 and 81-885.30, Reissue Revised Statutes of Nebraska, 1943, and sections 81-885.21 and 81-885.24, Revised Statutes Supplement, 1980, relating to the State Real Estate Commission; to change provisions for trust account deposits; to clarify a compensation provision; to change answer time; to change provisions for review of orders; to repeal the original sections, and also section 81-885.31, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

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

Section 1. That section 81-885.21, Revised Statutes Supplement, 1980, be amended to read as follows:

81-885.21. (1) Each broker shall maintain a separate insured bank noninterest bearing checking account in this state in his or her name or the name under which he or she does business, which shall be designated a trust account in which all downpayments, earnest money deposits, or other trust funds received by him or her, his or her associate brokers, or his or her salesperson on behalf of his or her principal or any other person shall be deposited and remain until the transaction is closed or otherwise terminated unless all parties having an interest in the funds have agreed otherwise in writing.

(2) Each broker shall notify the commission of the name of the bank or banks in which the trust account is maintained and also the name of the account on forms provided therefor.

(3) Each broker shall authorize the commission to examine such trust account by a duly authorized representative of the commission. Such examination shall be made annually or at such time as the commission may direct.

(4) A broker may maintain more than one trust account in his or her name or the name under which he does business if the commission is advised of such account as required in subsection (2) of this section.

(5) In the event a branch office maintains a separate trust account, a separate bookkeeping system shall be maintained in the branch office.

(6) A broker shall not be entitled to any part of the earnest money or other money paid to him or her or the entity under which he or she does business in connection with any real estate transaction as part or all of his or her commission or fee until the transaction has been consummated or terminated.

Sec. 2. That section 31-885.24, Revised Statutes Supplement, 1980, 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 31-885.01 to 31-885.47 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) 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) 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) 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 81-885.47 ~~or~~ unless such person is a nonresident who is licensed in his or her state of residence;

(18) 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) 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) 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) Making any substantial misrepresentations;

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

(23) 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) 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) 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 81-885.47;

(26) Failing by a subdivider, after the original certificate has been issued, to comply with all of the requirements of sections 81-885.01 to 81-885.47;

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

(28) Demonstrating unworthiness or incompetency to act as a broker, associate broker, or salesperson, whether of the same or of a different character as hereinbefore specified.

Sec. 3. That section 81-885.26, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.26. Within ~~fifteen~~ twenty days from the time of service of the complaint and notice the licensee shall file his or her sworn answer thereto, which shall contain all defenses which he or she intends to assert and no motions or other pleadings shall be authorized.

Sec. 4. That section 81-885.30, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.30. ~~Within ten days after an~~ An order of the commission which has become final shall be subject to judicial review under sections 84-917 to 84-919. ~~7--the applicant for a license or a license holder may obtain judicial review thereof by serving upon the director a written notice of appeal and a demand in writing for certified transcript of all the papers on file in his office affecting or relating to such order, together with a transcript of the evidence and the payment of the fee therefor, and he shall, within thirty days from the entry of such order, file a petition for review in the district court for the county where the cause of action or some part thereof arose, together with a bond to the State of Nebraska in the sum of two hundred dollars, with sufficient surety to be approved by the clerk of the district court to which such appeal is taken and conditioned that the applicant for a license or license holder shall pay all costs taxed against him which may accrue to the commission by reason of taking such appeal. In lieu of such bond, a cash deposit of two hundred dollars may be made with the clerk for the same purpose. The petition for review need not be verified but shall state the grounds upon which such review is sought. The commission shall be deemed to be a party to any such review proceedings. The petition for review shall be served upon the director by leaving with him a copy of the petition and the commission shall file its answer within ten days from the date of service of the petition for review.~~

Sec. 5. That original sections 81-885.26 and 81-885.30, Reissue Revised Statutes of Nebraska, 1943, and sections 81-885.21 and 81-885.24, Revised Statutes Supplement, 1980, and also section 81-885.31, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 6. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.