

LEGISLATIVE BILL 118

Approved by the Governor March 8, 1991

Introduced by Schimek, 27; Conway, 17; Smith, 33

AN ACT relating to the Nebraska Real Estate License Act; to amend sections 81-885.21 and 81-885.47, Reissue Revised Statutes of Nebraska, 1943, and sections 81-885.01 and 81-885.14, Revised Statutes Supplement, 1990; to require licensees to have errors and omissions insurance; to provide powers and duties for the commission; to provide for inactive brokers; to harmonize provisions; and to repeal the original sections.

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

Section 1. (1) Commencing January 1, 1993, every licensee under the Nebraska Real Estate License Act, except an inactive broker or salesperson, shall have errors and omissions insurance to cover all activities contemplated under the act. The commission shall make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after competitive bidding. Any group policy obtained by the commission shall be available to all licensees with no right on the part of the insurer to cancel any licensee. Licensees may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the commission.

(2) The commission shall determine the terms and conditions of coverage required under this section, including the minimum limits of coverage, the permissible deductible, and permissible exemptions. Each licensee shall be notified of the required terms and conditions at least thirty days prior to the annual license renewal date. A certificate of coverage showing compliance with the required terms and conditions shall be filed with the commission by the annual license renewal date by each licensee who does not participate in the group program administered by the commission.

(3) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable premium not to exceed one hundred dollars, the errors and omissions insurance requirement

of this section shall not apply during the year for which coverage cannot be obtained.

Sec. 2. That section 81-885.01, Revised Statutes Supplement, 1990, be amended to read as follows:

81-885.01. For purposes of the Nebraska Real Estate License Act, unless the context otherwise requires:

(1) Real estate shall mean and include condominiums and leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold, and whether the real estate is situated in this state or elsewhere;

(2) Broker shall mean any person who, for a fee, a commission, or any other valuable consideration or with the intent or expectation of receiving the same from another, negotiates or attempts to negotiate the listing, sale, purchase, exchange, rent, lease, or option for any real estate or improvements thereon, or assists in procuring prospects or holds himself or herself out as a referral agent for the purpose of securing prospects for the listing, sale, purchase, exchange, renting, leasing, or optioning of any real estate or collects rents or attempts to collect rents, or holds himself or herself out as engaged in any of the foregoing. Broker shall also include any person: (a) Employed by or on behalf of the owner or owners of lots or other parcels of real estate at a salary, fee, or commission or any other valuable consideration to sell such real estate or any part thereof in lots or parcels or make other disposition thereof; (b) who engages in the business of charging an advance fee in connection with any contract whereby he or she undertakes primarily to promote the sale of real estate either through its listing in a publication issued primarily for such purpose or for referral of information concerning such real estate to brokers or both; (c) who auctions, offers, attempts, or agrees to auction real estate; or (d) who buys or offers to buy or sell or otherwise deals in options to buy real estate;

(3) Associate broker shall mean a person who has a broker's license and who is employed by another broker to participate in any activity described in subdivision (2) of this section;

(4) Designated broker shall mean an individual holding a broker's license appointed by a partnership or corporation engaged in the real estate brokerage business to be responsible for the acts of the partnership or corporation and to whom the partners or

board of directors has subordinated full authority to conduct the real estate activities of the partnership or corporation;

(5) Inactive broker shall mean an associate broker whose license has been returned to the commission by the licensee's broker, a broker who has requested the commission to place the license on inactive status, or a new licensee who has failed to designate an employing broker or have the license issued as an individual broker;

(6) Salesperson shall mean any person, other than an associate broker, who is employed by a broker to participate in any activity described in subdivision (2) of this section;

~~(6)~~ (7) Inactive salesperson shall mean a salesperson whose license has been returned to the commission by the licensee's broker, a salesperson who has requested the commission to place the license on inactive status, or a new licensee who has failed to designate an employing broker;

~~(7)~~ (8) Person shall mean and include individuals, corporations, and partnerships, except that when referring to a person licensed under the act, it shall mean an individual;

~~(8)~~ (9) Subdivision or subdivided land shall mean any real estate offered for sale and which has been registered under the Interstate Land Sales Full Disclosure Act, 82 Stat. 590 and following, 15 U.S.C. 1701 and following, as such act existed on January 1, 1973, or real estate located out of this state which is divided or proposed to be divided into twenty-five or more lots, parcels, or units;

~~(9)~~ (10) Subdivider shall mean any person who causes land to be subdivided into a subdivision for himself, herself, or others or who undertakes to develop a subdivision but shall not include a public agency or officer authorized by law to create subdivisions;

~~(10)~~ (11) Purchaser shall mean a person who acquires or attempts to acquire or succeeds to an interest in land; and

~~(11)~~ (12) Commission shall mean the State Real Estate Commission.

Sec. 3. That section 81-885.14, Revised Statutes Supplement, 1990, be amended to read as follows:

81-885.14. (1) To pay the expense of the maintenance and operation of the office of the commission and the enforcement of the Nebraska Real Estate License Act, the commission shall, at the time an

application is submitted, collect from an applicant for each broker's or salesperson's examination a fee to be established by the commission of not more than one hundred dollars and an application fee of seventy-five dollars. The commission shall also collect a reexamination fee to be established by the commission of not more than one hundred dollars for each reexamination. The commission may direct an applicant to pay the examination or reexamination fee to a third party who has contracted with the commission to administer the examination. A nonresident applicant who is duly licensed in the state of residence and who is granted a nonresident license under a reciprocal agreement without being required to take an examination shall not be required to pay the examination and application fees. Prior to the issuance of an original license, each applicant who has passed the examination required by section 81-885.13 or who has received a license under a reciprocal agreement shall pay a license fee in advance as follows: For a broker's license, sixty-five dollars for a resident and one hundred thirty dollars for a nonresident, and for a salesperson's license, forty-five dollars for a resident and ninety dollars for a nonresident. After the original issuance of a license, a renewal application and an annual fee of sixty-five dollars for each resident broker, one hundred thirty dollars for each nonresident broker, forty-five dollars for each resident salesperson, and ninety dollars for each nonresident salesperson shall be due and payable on or before the last day of November of each year. Failure to remit annual fees when due shall automatically cancel such license on December 31 of that year, but otherwise the license shall remain in full force and effect continuously from the date of issuance unless suspended or revoked by the commission for just cause. Any licensee who fails to file an application for the renewal of any license and pay the renewal fee as provided in this section may file a late renewal application and shall pay, in addition to the renewal fee, the sum of ten dollars for each month or fraction thereof beginning with the first day of December if such late application is filed before July 1 of the ensuing year. Any check presented to the commission as a fee for either an original or renewal license or for examination for license which is returned to the State Treasurer unpaid shall be cause for revocation or denial of license.

(2) An inactive broker or salesperson may renew his or her license by submitting an application

before December 1 prior to the ensuing year. Such broker or salesperson shall submit the renewal fee together with the completed renewal application on which he or she has noted his or her present inactive status. Any broker or salesperson whose license has been renewed on such inactive status shall not be permitted to engage in the real estate business until such time as he or she shall secure a new employing broker fulfills the requirements for active status. Any license which has been inactive for a continuous period of more than three years shall be reinstated only if the licensee has met the examination requirement of an original applicant.

Sec. 4. That section 81-885.21, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.21. (1) Each broker other than an inactive broker shall maintain a separate insured bank non-interest-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 or she 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. 5. That section 81-885.47, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-885.47. Sections 81-885.01 to 81-885.54 and section 1 of this act shall be known and may be cited as the Nebraska Real Estate License Act.

Sec. 6. That original sections 81-885.21 and 81-885.47, Reissue Revised Statutes of Nebraska, 1943, and sections 81-885.01 and 81-885.14, Revised Statutes Supplement, 1990, are repealed.