

LEGISLATIVE BILL 354

Approved by the Governor March 9, 1975

Introduced by Banking, Commerce and Insurance Committee, Murphy, 17, Chmn.; Duis, 39; Swigart, 8; Wiltse, 1; Hasebroock, 18; Stoney, 4; Warner, 25; Mills, 44

AN ACT to amend sections 81-885.18, 81-885.21, 81-885.24, 81-885.29, and 81-885.45, Revised Statutes Supplement, 1974, relating to the State Real Estate Commission; to provide additional time for setting hearings on refusals of applications; to clarify trust account provisions; to make certain acts unlawful; to provide additional grounds for disciplinary action; to provide for probation in lieu of suspension; to provide penalties; and to repeal the original sections.

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

Section 1. That section 81-885.18, Revised Statutes Supplement, 1974, be amended to read as follows:

81-885.18. (1) If the commission, after an application in proper form has been filed with it, accompanied by the proper fee, shall refuse to accept the application, the commission shall give notice of the fact to the applicant within fifteen days after its ruling, order, or decision.

(2) Upon written request from the applicant, filed within thirty days after receipt of such notice by the applicant, the commission shall set the matter down for a hearing to be conducted within ~~thirty~~ sixty days after receipt of the applicant's request.

(3) The hearing shall be at such time and place as the commission shall prescribe. At least fifteen days prior to the date set for the hearing, the commission shall notify the applicant and other persons protesting, and shall set forth in the notice the reasons why the commission refused to accept the application. Such written notice of hearing may be served by delivery personally to the applicant and protesters, or by mailing the same by registered or certified mail to the last-known business address of the applicant and protesters.

(4) At the hearing, the applicant shall be entitled to examine, either in person or by counsel, any

and all persons protesting against him, as well as all other witnesses whose testimony is relied upon to substantiate any protest or denial of the application. He shall be entitled to present such evidence, written and oral, as he may see fit and as may be pertinent to the inquiry.

(5) At the hearing, all witnesses shall be duly sworn by the chairman of the commission, or any member thereof, and stenographic notes of the proceedings shall be taken. Any party to the proceedings desiring it shall be furnished with a copy of such stenographic notes upon the payment to the commission of such fee as the commission shall prescribe, if the request for such copy is made within ten days from the date of any order issued by the commission.

(6) The commission shall render a decision on any application within sixty days from the final hearing on such application, and shall immediately notify the parties to the proceedings, in writing, of its ruling, order, or decision.

Sec. 2. That section 81-885.21, Revised Statutes Supplement, 1974, be amended to read as follows:

81-885.21. (1) Each broker shall maintain a separate bank checking account in this state which shall be designated a trust account in which all downpayments, earnest money deposits, or other trust funds received by him, his associate brokers, or his salesman on behalf of his 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 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 in connection with any real estate transaction as part or all of his commission or fee until the transaction has been consummated or terminated.

Sec. 3. That section 81-885.24, Revised Statutes Supplement, 1974, 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, salesman, 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 81-885.47 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 possession belonging to others;

(4) Commingling the money or other property of his principals with his 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 salesman from anyone other than his employing broker without the consent of his 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 authorized agent;

(12) Offering real estate for sale or lease without the knowledge and consent of the owner or his authorized agent or on terms other than those authorized by the owner or his 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, or lease of real estate directly with an owner or lessor if he 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 his 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 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 salesman who has not first secured his license under sections 81-885.01 to 81-885.47 or is a nonresident who is licensed in his 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 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 acts;

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

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

~~(27)~~ (28) Demonstrating unworthiness or incompetency to act as a broker, associate broker, or

salesman, whether of the same or of a different character as hereinbefore specified.

Sec. 4. That section 81-885.29, Revised Statutes Supplement, 1974, be amended to read as follows:

81-885.29. After such hearing, the commission shall state in writing, officially signed by the chairman and attested to by the director, its findings and determination and its order in the matter. If the commission shall determine that the license holder has been guilty of any violation of the provisions of sections 81-885.01 to 81-885.47, his license shall be revoked or suspended forthwith, or the commission may enter an order censoring the license holder. 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 license shall be fully reinstated. Any violation of sections 81-885.01 to 81-885.47 by the licensee during the period of probation shall cause the immediate execution of the suspension penalty.

Sec. 5. That section 81-885.45, Revised Statutes Supplement, 1974, be amended to read as follows:

81-885.45. Any person, partnership, or corporation, or subdivider acting as a broker, or salesman, or subdivider without having first obtained the required license, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than five hundred dollars nor more than one thousand dollars or any natural person so convicted to shall be punished by imprisonment in the county jail for not less than ten days nor more than six months, or by both such fine and imprisonment.

Sec. 6. That original sections 81-885.18, 81-885.21, 81-885.24, 81-885.29, and 81-885.45, Revised Statutes Supplement, 1974, are repealed.