

LEGISLATIVE BILL 618

Approved by the Governor April 28, 1999

Introduced by Schimek, 27

AN ACT relating to real estate; to amend sections 76-2201, 76-2203, 76-2221, and 81-885.01, Reissue Revised Statutes of Nebraska; to change and provide provisions relating to opinions and analysis of price; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 76-2201, Reissue Revised Statutes of Nebraska, is amended to read:

76-2201. Sections 76-2201 to 76-2250 and sections 3 and 4 of this act shall be known and may be cited as the Real Estate Appraiser Act.

Sec. 2. Section 76-2203, Reissue Revised Statutes of Nebraska, is amended to read:

76-2203. For purposes of the Real Estate Appraiser Act, the definitions found in sections 76-2204 to 76-2219 and sections 3 and 4 of this act shall be used.

Sec. 3. Broker's price opinion shall mean an analysis, opinion, or conclusion prepared by a person licensed under the Nebraska Real Estate License Act in the ordinary course of his or her business relating to the price of specified interests in or aspects of identified real estate or identified real property for the purpose of listing, purchase, or sale.

Sec. 4. Comparative market analysis shall mean an analysis, opinion, or conclusion prepared by a person licensed under the Nebraska Real Estate License Act in the ordinary course of his or her business relating to the price of specified interests in or aspects of identified real estate or identified real property by comparison to other real property currently or recently in the marketplace for the purpose of listing, purchase, or sale.

Sec. 5. Section 76-2221, Reissue Revised Statutes of Nebraska, is amended to read:

76-2221. The Real Estate Appraiser Act shall not apply to:

(1) Any real estate appraiser who is a salaried employee of (a) the federal government, (b) any agency of the state government or a political subdivision which appraises real estate, (c) any insurance company authorized to do business in this state, or (d) any bank, savings bank, savings and loan association, building and loan association, credit union, industrial loan and investment company, or small loan company licensed by the state or supervised or regulated by or through federal enactments covering financial institutions, except that any employee of the entities listed in subdivisions (a) through (d) of this subdivision who also practices as an independent real estate appraiser for others shall be subject to the act and shall be registered, licensed, or residential or general certified prior to engaging in such other appraising;

(2) A person licensed under the Nebraska Real Estate License Act who, in the ordinary course of his or her business, gives an opinion as to the price of real estate for the purpose of a prospective listing or sale a broker's price opinion or comparative market analysis, except that such opinion as to the listing price or the sale price or analysis shall not be referred to as an appraisal. No compensation, fee, or other consideration shall be charged for such opinion or analysis other than a real estate commission or brokerage fee charged or paid for brokerage services rendered in connection with the sale of the real estate involved unless the opinion or analysis is in writing and carries the following disclosure in bold fourteen-point type: This opinion or analysis is not an appraisal. It is intended only for the benefit of the addressee for the purpose of assisting buyers or sellers or prospective buyers or sellers in deciding the listing, offering, or sale price of the real property and not for any other purpose, including, but not limited to, lending purposes. This opinion or analysis is not governed by the Real Estate Appraiser Act, but is subject to enforcement through the Nebraska Real Estate License Act;

(3) Any person who provides assistance (a) in obtaining the data upon which an appraisal is based, (b) in the physical preparation of an appraisal report, such as taking photographs, preparing charts, maps, or graphs, or typing or printing the report, or (c) that does not directly involve the exercise of judgment in arriving at the analyses, opinions, or conclusions concerning real estate or real property set forth in the appraisal report;

(4) An appraiser trainee;

(5) Any person who renders an estimate or opinion of value of real estate or any interest in real estate when such estimate or opinion is for the purpose of real estate taxation or an employee of such person; or

(6) Any person who renders an estimate or opinion of value of real estate or any interest in real estate or damages thereto when such estimate or opinion is offered as testimony in any condemnation proceeding.

Sec. 6. Section 81-885.01, Reissue Revised Statutes of Nebraska, is amended to read:

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, gives a broker's price opinion or comparative market analysis, 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, limited liability company, or corporation engaged in the real estate brokerage business to be responsible for the acts of the partnership, limited liability company, or corporation and to whom the partners, members, or board of directors has subordinated full authority to conduct the real estate activities of the partnership, limited liability company, 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;

(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;

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

(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;

(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;

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

(12) Commission shall mean the State Real Estate Commission;

(13) Broker's price opinion shall mean an analysis, opinion, or conclusion prepared by a person licensed under the Nebraska Real Estate License Act in the ordinary course of his or her business relating to the price of specified interests in or aspects of identified real estate or identified real property for the purpose of listing, purchase, or sale; and

(14) Comparative market analysis shall mean an analysis, opinion, or conclusion prepared by a person licensed under the act in the ordinary course of his or her business relating to the price of specified interests in or aspects of identified real estate or identified real property by comparison to other real property currently or recently in the marketplace for the purpose of listing, purchase, or sale.

Sec. 7. Original sections 76-2201, 76-2203, 76-2221, and 81-885.01, Reissue Revised Statutes of Nebraska, are repealed.