

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 691

FINAL READING

Introduced by Langemeier, 23.

Read first time January 06, 2010

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Nebraska Real Estate License Act;
2 to amend section 81-885.03, Reissue Revised Statutes
3 of Nebraska, and sections 81-885.10, 81-885.25, and
4 81-885.29, Revised Statutes Supplement, 2009; to provide
5 for jurisdiction and the issuance of cease and desist
6 orders as prescribed; to provide for fines; to harmonize
7 provisions; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-885.03, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 81-885.03 (1) Any person who, directly or indirectly for
4 another, with the intention or upon the promise of receiving any
5 form of compensation or consideration, offers, attempts, or agrees
6 to perform or performs any single act described in subdivision (2)
7 of section 81-885.01, whether as a part of a transaction, or as an
8 entire transaction, shall be deemed a broker, associate broker, or
9 salesperson within the meaning of the Nebraska Real Estate License
10 Act, and such action shall constitute sufficient contact with the
11 state for the exercise of personal jurisdiction over such person
12 in any action arising out of such action. Committing a single act
13 described in such subdivision by a person required to be licensed
14 under the Nebraska Real Estate License Act and not so licensed
15 shall constitute a violation of the act for which the commission
16 may impose sanctions pursuant to this section for the protection of
17 the public health, safety, or welfare.

18 (2) Notwithstanding any other provision of the law to the
19 contrary, the director may issue a cease and desist order against
20 any person who violates this section by performing any action
21 described in subsection (1) of this section without the appropriate
22 license. Such order shall be final ten days after issuance unless
23 the violator requests a hearing pursuant to section 81-885.25.

24 (3) If such person violates a cease and desist order
25 issued pursuant to this section, he or she shall be subject

1 to further proceedings before the commission. If, during such
2 proceedings, the commission makes a finding of guilt, the
3 commission may impose a fine not to exceed (a) one thousand dollars
4 for each day that any action is performed without the appropriate
5 license following the issuance of the order or (b) the amount
6 of all money earned as commission by the violator, whichever is
7 greater. Judgments for the collection of any fine imposed under
8 this section may be filed in the district court of any county in
9 this state.

10 (4) Notice and hearing requirements under this section
11 shall be in accordance with the Administrative Procedure Act.

12 Sec. 2. Section 81-885.10, Revised Statutes Supplement,
13 2009, is amended to read:

14 81-885.10 The commission shall have the full power to
15 regulate the issuance of licenses and the activities of licensees
16 ~~and to~~ and may impose sanctions pursuant to this section for the
17 protection of the public health, safety, or welfare. The commission
18 may revoke or suspend licenses issued under the Nebraska Real
19 Estate License Act, to censure licensees, and to enter into consent
20 decrees, and issue cease and desist orders to violators of section
21 81-885.03. The commission may, alone or in combination with such
22 disciplinary actions, impose a civil fine on a licensee for each
23 violation alleged in a complaint for which the commission has made
24 a finding of guilt, except that the total fine for such violations
25 shall not exceed two thousand five hundred dollars per complaint.

1 The commission may also impose a civil fine on violators of section
2 81-885.03 subject to the limits in such section.

3 The commission shall retain its powers under this section
4 with respect to the actions of a licensee, whether or not he or she
5 continues to be licensed under the act.

6 Sec. 3. Section 81-885.25, Revised Statutes Supplement,
7 2009, is amended to read:

8 81-885.25 (1) Before the commission censures a licensee,
9 imposes a civil fine, ~~or~~ revokes or suspends a license, or issues a
10 cease and desist order, the commission shall send to the licensee
11 or violator a copy of the complaint by certified mail which
12 contains the charges against the licensee or violator and, unless
13 the licensee or violator waives the right to a hearing and has
14 executed a consent order, give the licensee or violator a hearing
15 on the matter.

16 (2) The ~~license holder~~ licensee or violator shall have
17 full authority to be heard in person or by counsel before the
18 commission in reference to such charges. The commission shall, at
19 least twenty days prior to the date set for hearing, notify the
20 licensee or violator in writing of the date and place of the
21 hearing. Such notice may be served by delivering it personally
22 to the ~~license holder~~ licensee or violator or by sending it by
23 either registered or certified mail to the last-known business
24 address of such ~~license holder~~ licensee or any known address of
25 the violator. If the ~~license holder~~ licensee is an associate broker

1 or a salesperson, the commission shall also notify the broker
2 employing the ~~license holder~~ licensee by mailing a copy of such
3 notice to the broker's last-known business address.

4 Sec. 4. Section 81-885.29, Revised Statutes Supplement,
5 2009, is amended to read:

6 81-885.29 After the hearing the commission shall state
7 in writing, officially signed by the chairperson and attested to
8 by the director, its findings and determination and its order
9 in the matter. If the commission determines that the ~~license~~
10 ~~holder~~ licensee has been guilty of any violation of the Nebraska
11 Real Estate License Act or the rules and regulations of the
12 commission or the violator has been guilty of a violation of
13 section 81-885.03, the commission may revoke or suspend the
14 license, enter an order censuring the ~~license holder~~, licensee,
15 or impose a civil fine on a licensee pursuant to section 81-885.10
16 or on a violator pursuant to section 81-885.03. The execution of
17 a penalty of suspension may be stayed by the commission and the
18 licensee may be placed on probation for the suspension period,
19 after satisfactory completion of which his or her license shall
20 be fully reinstated. Any violation of the act or the rules and
21 regulations by the licensee during the period of probation shall
22 cause the immediate execution of the suspension penalty.

23 Sec. 5. Original section 81-885.03, Reissue Revised
24 Statutes of Nebraska, and sections 81-885.10, 81-885.25, and
25 81-885.29, Revised Statutes Supplement, 2009, are repealed.