

LEGISLATIVE BILL 691

Approved by the Governor March 3, 2010

Introduced by Langemeier, 23.

FOR AN ACT relating to the Nebraska Real Estate License Act; to amend section 81-885.03, Reissue Revised Statutes of Nebraska, and sections 81-885.10, 81-885.25, and 81-885.29, Revised Statutes Supplement, 2009; to provide for jurisdiction and the issuance of cease and desist orders as prescribed; to provide for fines; to harmonize provisions; and to repeal the original sections.

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

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

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

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

(3) If such person violates a cease and desist order issued pursuant to this section, he or she shall be subject to further proceedings before the commission. If, during such proceedings, the commission makes a finding of guilt, the commission may impose a fine not to exceed (a) one thousand dollars for each day that any action is performed without the appropriate license following the issuance of the order or (b) the amount of all money earned as commission by the violator, whichever is greater. Judgments for the collection of any fine imposed under this section may be filed in the district court of any county in this state.

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

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

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

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

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

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

(2) The ~~license holder~~ licensee or violator shall have full authority to be heard in person or by counsel before the commission in reference to such charges. The commission shall, at least twenty days prior to the date set for hearing, notify the licensee or violator in writing of the date and place of the hearing. Such notice may be served by delivering it personally to the ~~license holder~~ licensee or violator or by sending it by either registered or certified mail to the last-known business address of such ~~license holder~~ licensee or any known address of the violator. If the ~~license holder~~ licensee is an associate broker or a salesperson, the commission shall also notify the broker employing the ~~license holder~~ licensee by mailing a copy of such notice to the broker's last-known business address.

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

81-885.29 After the hearing the commission shall state in writing, officially signed by the chairperson and attested to by the director, its findings and determination and its order in the matter. If the commission determines that the ~~license holder~~ licensee has been guilty of any violation of the Nebraska Real Estate License Act or the rules and regulations of the commission or the violator has been guilty of a violation of section 81-885.03, the commission may revoke or suspend the license, enter an order censuring the ~~license holder~~, licensee, or impose a civil fine on a licensee pursuant to section 81-885.10 or on a violator pursuant to section 81-885.03. 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 or her license shall be fully reinstated. Any violation of the act or the rules and regulations by the licensee during the period of probation shall cause the immediate execution of the suspension penalty.

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