

S-3/20/95 Gov.
S-4/5/95 Do Pass
S-4/13/95 placed on unfinished
Business calendar

MAR 2 1995

Place On Calendar

HOUSE FILE 252
BY COMMITTEE ON COMMERCE
AND REGULATION

(SUCCESSOR TO HSB 109)

Passed House, Date ^(p. 822) 3/20/95 Passed Senate, Date 4/25/95 (p. 1396)
Vote: Ayes 95 Nays 0 Vote: Ayes 46 Nays 0
Approved May 4, 1995

A BILL FOR

1 An Act relating to the regulation of real estate brokers and
2 salespersons.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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252

1 Section 1. Section 543B.1, Code 1995, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 543B.1 LICENSE MANDATORY.

5 A person shall not, directly or indirectly, with the
6 intention or upon the promise of receiving any valuable
7 consideration, offer, attempt, agree to perform, or perform
8 any single act as a real estate broker whether as a part of a
9 transaction or as an entire transaction, or represent oneself
10 as a real estate broker, broker associate, or salesperson,
11 without first obtaining a license and otherwise complying with
12 the requirements of this chapter.

13 Sec. 2. Section 543B.3, Code 1995, is amended by striking
14 the section and inserting in lieu thereof the following:

15 543B.3 BROKER -- DEFINITION.

16 As used in this chapter, "real estate broker" means a
17 person acting for another for a fee, commission, or other
18 compensation or promise, whether it be for all or part of a
19 person's time, and who engages directly or indirectly in any
20 of the following acts:

21 1. Sells, exchanges, purchases, rents, or leases real
22 estate.

23 2. Lists, offers, attempts, or agrees to list real estate
24 for sale, exchange, purchase, rent, or lease.

25 3. Advertises or holds oneself out as being engaged in the
26 business of selling, exchanging, purchasing, renting, leasing,
27 or managing real estate.

28 4. Negotiates, or offers, attempts, or agrees to
29 negotiate, the sale, exchange, purchase, rental, or lease of
30 real estate.

31 5. Buys, sells, offers to buy or sell, or otherwise deals
32 in options on real estate or improvements on real estate.

33 6. Collects, or offers, attempts, or agrees to collect,
34 rent for the use of real estate.

35 7. Assists or directs in the procuring of prospects,

1 intended to result in the sale, exchange, purchase, rental, or
2 leasing of real estate.

3 8. Assists or directs in the negotiation of any
4 transaction intended to result in the sale, exchange,
5 purchase, rental, or leasing of real estate.

6 Sec. 3. Section 543B.4, Code 1995, is amended to read as
7 follows:

8 543B.4 REAL ESTATE -- DEFINITION.

9 ~~"Real-estate"~~-as As used in this chapter, ~~shall-mean~~ "real
10 estate" means real property wherever situated, and ~~shall~~
11 ~~include~~ includes any and all leaseholds or any other interest
12 or estate therein in land, and business opportunities which
13 involve any interest in real property.

14 Sec. 4. Section 543B.5, Code 1995, is amended to read as
15 follows:

16 543B.5 OTHER DEFINITIONS.

17 As used in this chapter:

18 1. "Branch office" means a real estate broker's office
19 other than a principal place of business.

20 ~~±~~ 2. "Broker associate" means a person who has a broker's
21 license but is licensed under, and employed by or otherwise
22 associated with, another broker as a salesperson.

23 ~~2~~ 3. "Inactive license" means either a broker or
24 salesperson license certificate that is on file with the real
25 estate commission in the commission office and during which
26 time the licensee is precluded from engaging in any of the
27 acts of this chapter.

28 4. "Person" means an individual, partnership, association,
29 or corporation.

30 5. "Regular employee" means a person whose compensation is
31 fixed in advance, who does not receive a commission, who works
32 exclusively for the owner, and whose total compensation is
33 subject to state and federal withholding.

34 ~~3~~ 6. "Salesperson" means a person who is licensed under,
35 and employed by or otherwise associated with, a real estate

1 broker, as a selling, renting, or listing agent or
2 representative of the broker.

3 Sec. 5. Section 543B.7, Code 1995, is amended to read as
4 follows:

5 543B.7 ACTS EXCLUDED FROM PROVISIONS.

6 The provisions of this chapter shall not apply to the sale,
7 exchange, purchase, rental, lease, or advertising of any real
8 estate in any of the following cases:

9 ~~1. Owners or lessors, or to the regular employees thereof,~~
10 ~~with respect to the property owned and leased where such acts~~
11 ~~are performed in the regular course of or incident to the~~
12 ~~management of property owned and the investment therein:~~

13 1. A person who, as owner, spouse of an owner, general
14 partner of a limited partnership, lessor, or prospective
15 purchaser, or through another engaged by such person on a
16 regular full-time basis, buys, sells, manages, or otherwise
17 performs any act with reference to property owned, rented,
18 leased, or to be acquired by such person.

19 2. By any person acting as attorney in fact under a duly
20 executed and acknowledged power of attorney from the owner,
21 authorizing to act on behalf of the owner or lessor to
22 authorize the final consummation and execution of any contract
23 for the sale, leasing, or exchange of real estate.

24 3. ~~Nor shall the provisions of this chapter apply to an~~ A
25 licensed attorney admitted to practice in Iowa acting solely
26 as an incident to the practice of law.

27 4. ~~The acts of one while~~ A person acting as a receiver,
28 trustee in bankruptcy, administrator, executor, guardian, or
29 while acting under court order or ~~while acting~~ under authority
30 of a deed of trust, trust agreement, or will.

31 5. The acts of an auctioneer in conducting a public sale
32 or auction. The auctioneer's role must be limited to
33 establishing the time, place, and method of an auction,
34 advertising the auction including a brief description of the
35 property for auction and the time and place for the auction,

1 and crying the property at the auction. If the auctioneer
2 closes or attempts to close the sale of the property or
3 otherwise engages in acts defined in sections 543B.3 and
4 543B.6, then the requirements of this chapter do apply to the
5 auctioneer.

6 6. An isolated real estate rental transaction by an
7 owner's representative on behalf of said the owner; such
8 transaction not being made in the course of repeated and
9 successive transactions of a like character.

10 7. The sale of time-share uses as defined in section
11 557A.2.

12 8. A person acting as a resident manager when such
13 resident manager resides in the dwelling and is engaged in the
14 leasing of real property in connection with their employment.

15 9. An officer or employee of the federal government, state
16 government, or a political subdivision of the state, in the
17 conduct of the officer's or employee's official duties.

18 10. A person employed by a public or private utility who
19 performs an act with reference to property owned, leased, or
20 to be acquired by the utility employing that person, where
21 such an act is performed in the regular course of, or incident
22 to, the management of the property and the investment in the
23 property.

24 Sec. 6. Section 543B.34, subsection 9, Code 1995, is
25 amended to read as follows:

26 9. a. Paying a commission or any part of a commission for
27 performing any of the acts specified in this chapter to a
28 person who is not a licensed broker or salesperson under this
29 chapter or who is not engaged in the real estate business in
30 another state or foreign country, provided that the provisions
31 of this section shall not be construed to prohibit the payment
32 of earned commissions to any of the following:

33 (1) The estate or heirs of a deceased real estate licensee
34 when such licensee had a valid real estate license in effect
35 at the time the commission was earned.

1 (2) A citizen of another country acting as a referral
2 agent if that country does not license real estate brokers and
3 if the Iowa licensee paying the commission or compensation
4 obtains and maintains reasonable written evidence that the
5 payee is a citizen of the other country, is not a resident of
6 this country, and is in the business of brokering real estate
7 in that other country.

8 (3) A corporation pursuant to paragraph "b".

9 b. However, -a A broker may pay a commission to a
10 corporation which is wholly owned, or owned with a spouse, by
11 a salesperson or broker associate employed by or otherwise
12 associated with the broker, if all of the following conditions
13 are met:

14 a. (1) The corporation does not engage in real estate
15 transactions as a third-party agent or in any other activity
16 requiring a license under this chapter.

17 b. (2) The employing broker is not relieved of any
18 obligation to supervise the employed licensee or any other
19 requirement of this chapter or the rules adopted pursuant to
20 this chapter.

21 c. (3) The employed broker associate or salesperson is
22 not relieved from any personal civil liability for any
23 licensed activities by interposing the corporate form.

24 Sec. 7. Section 543B.46, subsection 4, Code 1995, is
25 amended to read as follows:

26 4. Each broker shall only deposit trust funds received on
27 real estate or business opportunity transactions as defined in
28 section 543B.6 in ~~said~~ the common trust account and shall not
29 commingle the broker's personal funds or other funds in ~~said~~
30 the trust account with the exception that a broker may deposit
31 and keep a sum not to exceed one five hundred dollars in ~~said~~
32 the account from the broker's personal funds, which sum shall
33 be specifically identified and deposited to cover bank service
34 charges relating to ~~said~~ the trust account.

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EXPLANATION

1 This bill amends provisions of chapter 543B relating to
2 real estate brokers and salespersons.

3 Section 543B.1, which establishes a licensing requirement
4 for real estate brokers and salespersons, is rewritten to
5 provide that it is unlawful for a person to offer, attempt,
6 agree to perform, or perform any single act as a real estate
7 broker for compensation, or to represent oneself as a real
8 estate broker, broker associate, or salesperson, without first
9 obtaining a license and otherwise complying with the
10 requirements of this chapter. Currently, the section provides
11 that a person is not to act as a real estate broker or real
12 estate salesperson without first obtaining a license.

13 Section 543B.3, which establishes the definition of "real
14 estate broker", is rewritten to provide that "real estate
15 broker" means a person acting for another for a fee,
16 commission, or other compensation or promise, who engages in
17 any of the acts as specified in the section. The acts pertain
18 to transactions involving real estate, holding oneself out as
19 being in the business of conducting such transactions, and
20 collecting or offering to collect rent for the use of real
21 estate.

22 Section 543B.4, which establishes the definition of "real
23 estate", is amended to include all leaseholds or any other
24 interest in land, and business opportunities which involve any
25 interest in real property.

26 Section 543B.5, which establishes certain other definitions
27 used in the chapter, is amended as follows:

28 1. The definition of "broker associate" is amended to
29 provide that a broker associate must be licensed under another
30 broker as a salesperson.

31 2. The definition of "salesperson" is amended to provide
32 that a salesperson must be licensed under a real estate
33 broker.

34 3. New definitions are established for "branch office",
35 "person", and "regular employee".

1 Section 543B.7, which relates to acts excluded from the
2 provisions of the chapter, is amended to include a person who
3 as owner, owner's spouse, general partner of a limited
4 partnership, lessor, or prospective purchaser, or through
5 another engaged by any of these persons, buys, sells, manages,
6 or performs any other act related to property owned, rented,
7 leased, or to be acquired by these persons; a person acting as
8 a resident manager; an officer or employee of the state,
9 federal government, or of a political subdivision; or a person
10 employed by a public utility with respect to property owned,
11 leased, or to be acquired by the public utility, as persons to
12 which the chapter does not apply.

13 Section 543B.34, subsection 9, which relates to actions of
14 a licensee which may result in the suspension or revocation of
15 a license, is amended to include improper payment of a
16 commission to a person in a foreign country, and also provides
17 that the section is not to be construed to prohibit the
18 payment of an earned commission to the estate or heirs of a
19 deceased real estate licensee, or a citizen of another country
20 acting as a referral agent if that country does not license
21 real estate brokers and that person is not a resident of this
22 country and is in the business of brokering real estate in
23 that other country.

24 Section 543B.46, subsection 4, is amended to provide that a
25 broker may deposit a sum not to exceed \$500 in the broker's
26 trust account. Current law provides that a broker may not
27 deposit a sum greater than \$100 in the account.

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NUTT, Chair

Halvorson

Cataldo

HSB 109

COMMERCE - REGULATION
SENATE/HOUSE FILE

252

BY (PROPOSED DEPARTMENT OF
COMMERCE/PROFESSIONAL
LICENSING AND REGULATION
DIVISION BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the regulation of real estate brokers and
2 salespersons.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 543B.1, Code 1995, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 543B.1 LICENSE MANDATORY.

5 A person shall not, directly or indirectly, with the
6 intention or upon the promise of receiving any valuable
7 consideration, offer, attempt, agree to perform, or perform
8 any single act as a real estate broker whether as a part of a
9 transaction or as an entire transaction, or represent oneself
10 as a real estate broker, broker associate, or salesperson,
11 without first obtaining a license and otherwise complying with
12 the requirements of this chapter.

13 Sec. 2. Section 543B.3, Code 1995, is amended by striking
14 the section and inserting in lieu thereof the following:

15 543B.3 BROKER -- DEFINITION.

16 As used in this chapter, "real estate broker" means a
17 person acting for another for a fee, commission, or other
18 compensation or promise, whether it be for all or part of a
19 person's time, and who engages directly or indirectly in any
20 of the following acts:

21 1. Sells, exchanges, purchases, rents, or leases real
22 estate.

23 2. Lists, offers, attempts, or agrees to list real estate
24 for sale, exchange, purchase, rent, or lease.

25 3. Advertises or holds oneself out as being engaged in the
26 business of selling, exchanging, purchasing, renting, leasing,
27 or managing real estate.

28 4. Negotiates, or offers, attempts, or agrees to
29 negotiate, the sale, exchange, purchase, rental, or lease of
30 real estate.

31 5. Buys, sells, offers to buy or sell, or otherwise deals
32 in options on real estate or improvements on real estate.

33 6. Collects, or offers, attempts, or agrees to collect,
34 rent for the use of real estate.

35 7. Assists or directs in the procuring of prospects,

1 intended to result in the sale, exchange, purchase, rental, or
2 leasing of real estate.

3 8. Assists or directs in the negotiation of any
4 transaction intended to result in the sale, exchange,
5 purchase, rental, or leasing of real estate.

6 Sec. 3. Section 543B.4, Code 1995, is amended to read as
7 follows:

8 543B.4 REAL ESTATE -- DEFINITION.

9 ~~"Real-estate"~~ As used in this chapter, ~~shall mean~~ "real
10 estate" means real property wherever situated, and ~~shall~~
11 ~~include~~ includes any and all leaseholds or any other interest
12 or estate therein in land, and business opportunities which
13 involve any interest in real property.

14 Sec. 4. Section 543B.5, Code 1995, is amended to read as
15 follows:

16 543B.5 OTHER DEFINITIONS.

17 As used in this chapter:

18 1. "Branch office" means a real estate broker's office
19 other than a principal place of business.

20 ~~1-~~ 2. "Broker associate" means a person who has a broker's
21 license but is licensed under, and employed by or otherwise
22 associated with, another broker as a salesperson.

23 ~~2-~~ 3. "Inactive license" means either a broker or
24 salesperson license certificate that is on file with the real
25 estate commission in the commission office and during which
26 time the licensee is precluded from engaging in any of the
27 acts of this chapter.

28 4. "Person" means an individual, partnership, association,
29 or corporation.

30 5. "Regular employee" means a person whose compensation is
31 fixed in advance, who does not receive a commission, who works
32 exclusively for the owner, and whose total compensation is
33 subject to state and federal withholding.

34 ~~3-~~ 6. "Salesperson" means a person who is licensed under,
35 and employed by or otherwise associated with, a real estate

1 broker, as a selling, renting, or listing agent or
2 representative of the broker.

3 Sec. 5. Section 543B.7, Code 1995, is amended to read as
4 follows:

5 543B.7 ACTS EXCLUDED FROM PROVISIONS.

6 The provisions of this chapter shall not apply to the sale,
7 exchange, purchase, rental, lease, or advertising of any real
8 estate in any of the following cases:

9 ~~1. Owners or lessors, or to the regular employees thereof,~~
10 ~~with respect to the property owned and leased where such acts~~
11 ~~are performed in the regular course of or incident to the~~
12 ~~management of property owned and the investment therein.~~

13 1. A person who, as owner, spouse of an owner, general
14 partner of a limited partnership, lessor, or prospective
15 purchaser, or through another engaged by such person on a
16 regular full-time basis, buys, sells, manages, or otherwise
17 performs any act with reference to property owned, rented,
18 leased, or to be acquired by such person.

19 2. By any person acting as attorney in fact under a duly
20 executed and acknowledged power of attorney from the owner,
21 authorizing to act on behalf of the owner or lessor to
22 authorize the final consummation and execution of any contract
23 for the sale, leasing, or exchange of real estate.

24 3. ~~Nor shall the provisions of this chapter apply to an~~ A
25 licensed attorney admitted to practice in Iowa acting solely
26 as an incident to the practice of law.

27 4. ~~The acts of one while~~ A person acting as a receiver,
28 trustee in bankruptcy, administrator, executor, guardian, or
29 while acting under court order or ~~while acting~~ under authority
30 of a deed of trust, trust agreement, or will.

31 5. The acts of an auctioneer in conducting a public sale
32 or auction. The auctioneer's role must be limited to
33 establishing the time, place, and method of an auction,
34 advertising the auction including a brief description of the
35 property for auction and the time and place for the auction,

1 and crying the property at the auction. If the auctioneer
2 closes or attempts to close the sale of the property or
3 otherwise engages in acts defined in sections 543B.3 and
4 543B.6, then the requirements of this chapter do apply to the
5 auctioneer.

6 6. An isolated real estate rental transaction by an
7 owner's representative on behalf of ~~said~~ the owner; such
8 transaction not being made in the course of repeated and
9 successive transactions of a like character.

10 7. The sale of time-share uses as defined in section
11 557A.2.

12 8. A person acting as a resident manager when such
13 resident manager resides in the dwelling and is engaged in the
14 leasing of real property in connection with their employment.

15 9. An officer or employee of the federal government, state
16 government, or a political subdivision of the state, in the
17 conduct of the officer's or employee's official duties.

18 10. A person employed by a public or private utility who
19 performs an act with reference to property owned, leased, or
20 to be acquired by the utility employing that person, where
21 such an act is performed in the regular course of, or incident
22 to, the management of the property and the investment in the
23 property.

24 Sec. 6. Section 543B.34, subsection 9, Code 1995, is
25 amended to read as follows:

26 9. a. Paying a commission or any part of a commission for
27 performing any of the acts specified in this chapter to a
28 person who is not a licensed broker or salesperson under this
29 chapter or who is not engaged in the real estate business in
30 another state or foreign country, provided that the provisions
31 of this section shall not be construed to prohibit the payment
32 of earned commissions to any of the following:

33 (1) The estate or heirs of a deceased real estate licensee
34 when such licensee had a valid real estate license in effect
35 at the time the commission was earned.

1 (2) A citizen of another country acting as a referral
2 agent if that country does not license real estate brokers and
3 if the Iowa licensee paying the commission or compensation
4 obtains and maintains reasonable written evidence that the
5 payee is a citizen of the other country, is not a resident of
6 this country, and is in the business of brokering real estate
7 in that other country.

8 (3) A corporation pursuant to paragraph "b".

9 b. However, a A broker may pay a commission to a
10 corporation which is wholly owned, or owned with a spouse, by
11 a salesperson or broker associate employed by or otherwise
12 associated with the broker, if all of the following conditions
13 are met:

14 a. (1) The corporation does not engage in real estate
15 transactions as a third-party agent or in any other activity
16 requiring a license under this chapter.

17 b. (2) The employing broker is not relieved of any
18 obligation to supervise the employed licensee or any other
19 requirement of this chapter or the rules adopted pursuant to
20 this chapter.

21 c. (3) The employed broker associate or salesperson is
22 not relieved from any personal civil liability for any
23 licensed activities by interposing the corporate form.

24 Sec. 7. Section 543B.46, subsection 4, Code 1995, is
25 amended to read as follows:

26 4. Each broker shall only deposit trust funds received on
27 real estate or business opportunity transactions as defined in
28 section 543B.6 in ~~said~~ the common trust account and shall not
29 commingle the broker's personal funds or other funds in ~~said~~
30 the trust account with the exception that a broker may deposit
31 and keep a sum not to exceed one five hundred dollars in ~~said~~
32 the account from the broker's personal funds, which sum shall
33 be specifically identified and deposited to cover bank service
34 charges relating to ~~said~~ the trust account.

35

EXPLANATION

1 This bill amends provisions of chapter 543B relating to
2 real estate brokers and salespersons.

3 Section 543B.1, which establishes a licensing requirement
4 for real estate brokers and salespersons, is rewritten to
5 provide that it is unlawful for a person to offer, attempt,
6 agree to perform, or perform any single act as a real estate
7 broker for compensation, or to represent oneself as a real
8 estate broker, broker associate, or salesperson, without first
9 obtaining a license and otherwise complying with the
10 requirements of this chapter. Currently, the section provides
11 that a person is not to act as a real estate broker or real
12 estate salesperson without first obtaining a license.

13 Section 543B.3, which establishes the definition of "real
14 estate broker", is rewritten to provide that "real estate
15 broker" means a person acting for another for a fee,
16 commission, or other compensation or promise, who engages in
17 any of the acts as specified in the section. The acts pertain
18 to transactions involving real estate, holding oneself out as
19 being in the business of conducting such transactions, and
20 collecting or offering to collect rent for the use of real
21 estate.

22 Section 543B.4, which establishes the definition of "real
23 estate", is amended to include all leaseholds or any other
24 interest in land, and business opportunities which involve any
25 interest in real property.

26 Section 543B.5, which establishes certain other definitions
27 used in the chapter, is amended as follows:

28 1. The definition of "broker associate" is amended to
29 provide that a broker associate must be licensed under another
30 broker as a salesperson.

31 2. The definition of "salesperson" is amended to provide
32 that a salesperson must be licensed under a real estate
33 broker.

34 3. New definitions are established for "branch office",
35 "person", and "regular employee".

1 Section 543B.7, which relates to acts excluded from the
2 provisions of the chapter, is amended to include a person who
3 as owner, owner's spouse, general partner of a limited
4 partnership, lessor, or prospective purchaser, or through
5 another engaged by any of these persons, buys, sells, manages,
6 or performs any other act related to property owned, rented,
7 leased, or to be acquired by these persons; a person acting as
8 a resident manager; an officer or employee of the state,
9 federal government, or of a political subdivision; or a person
10 employed by a public utility with respect to property owned,
11 leased, or to be acquired by the public utility, as persons to
12 which the chapter does not apply.

13 Section 543B.34, subsection 9, which relates to actions of
14 a licensee which may result in the suspension or revocation of
15 a license, is amended to include improper payment of a
16 commission to a person in a foreign country, and also provides
17 that the section is not to be construed to prohibit the
18 payment of an earned commission to the estate or heirs of a
19 deceased real estate licensee, or a citizen of another country
20 acting as a referral agent if that country does not license
21 real estate brokers and that person is not a resident of this
22 country and is in the business of brokering real estate in
23 that other country.

24 Section 543B.46, subsection 4, is amended to provide that a
25 broker may deposit a sum not to exceed \$500 in the broker's
26 trust account. Current law provides that a broker may not
27 deposit a sum greater than \$100 in the account.

28 BACKGROUND STATEMENT

29 SUBMITTED BY THE AGENCY

30 This bill is intended to represent the Iowa real estate
31 commission's continuing desire to assist the public and
32 licensees by updating language and by clarifying the present
33 law to reduce confusion being experienced by the public,
34 licensees, and the legal profession. Section 543B.1 is
35 amended for clarification. Section 543B.3 is amended to more

1 clearly define the acts which constitute dealing in real
2 estate. Section 543B.5 is amended by creating definitions for
3 the terms "branch office", "regular employee", and "person",
4 and by amending the definition of "salesperson" to update and
5 clarify that definition. Section 543B.7 is amended to more
6 clearly define the exceptions to the mandatory license
7 requirement. Section 543B.34, subsection 9, is amended to
8 allow commission payment to the heirs of a deceased licensee,
9 and in accordance with the North American free trade
10 agreement, to a person licensed in a foreign country and to an
11 unlicensed agent in a foreign country that does not license
12 real estate agents. Section 543B.46 is amended to allow
13 brokers to have up to \$500 deposited in the broker's trust
14 account to cover bank-initiated service charges and other
15 bank-related expenses such as check printing. The \$100 limit
16 is no longer high enough to cover these expenses in many
17 cases.

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HOUSE FILE 252

AN ACT

RELATING TO THE REGULATION OF REAL ESTATE BROKERS AND SALES-
PERSONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 543B.1, Code 1995, is amended by striking the section and inserting in lieu thereof the following:

543B.1 LICENSE MANDATORY.

A person shall not, directly or indirectly, with the intention or upon the promise of receiving any valuable consideration, offer, attempt, agree to perform, or perform any single act as a real estate broker whether as a part of a transaction or as an entire transaction, or represent oneself as a real estate broker, broker associate, or salesperson, without first obtaining a license and otherwise complying with the requirements of this chapter.

Sec. 2. Section 543B.3, Code 1995, is amended by striking the section and inserting in lieu thereof the following:

543B.3 BROKER -- DEFINITION.

As used in this chapter, "real estate broker" means a person acting for another for a fee, commission, or other compensation or promise, whether it be for all or part of a person's time, and who engages directly or indirectly in any of the following acts:

1. Sells, exchanges, purchases, rents, or leases real estate.
2. Lists, offers, attempts, or agrees to list real estate for sale, exchange, purchase, rent, or lease.
3. Advertises or holds oneself out as being engaged in the business of selling, exchanging, purchasing, renting, leasing, or managing real estate.

4. Negotiates, or offers, attempts, or agrees to negotiate, the sale, exchange, purchase, rental, or lease of real estate.

5. Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or improvements on real estate.

6. Collects, or offers, attempts, or agrees to collect, rent for the use of real estate.

7. Assists or directs in the procuring of prospects, intended to result in the sale, exchange, purchase, rental, or leasing of real estate.

8. Assists or directs in the negotiation of any transaction intended to result in the sale, exchange, purchase, rental, or leasing of real estate.

Sec. 3. Section 543B.4, Code 1995, is amended to read as follows:

543B.4 REAL ESTATE -- DEFINITION.

~~"Real-estate"~~ as used in this chapter, ~~shall mean~~ "real estate" means real property wherever situated, and ~~shall include~~ includes any and all leaseholds or any other interest or estate therein in land, and business opportunities which involve any interest in real property.

Sec. 4. Section 543B.5, Code 1995, is amended to read as follows:

543B.5 OTHER DEFINITIONS.

As used in this chapter:

1. "Branch office" means a real estate broker's office other than a principal place of business.
2. "Broker associate" means a person who has a broker's license but is licensed under, and employed by or otherwise associated with, another broker as a salesperson.
3. "Inactive license" means either a broker or salesperson license certificate that is on file with the real estate commission in the commission office and during which time the licensee is precluded from engaging in any of the acts of this chapter.

4. "Person" means an individual, partnership, association, or corporation.

5. "Regular employee" means a person whose compensation is fixed in advance, who does not receive a commission, who works exclusively for the owner, and whose total compensation is subject to state and federal withholding.

6. "Salesperson" means a person who is licensed under, and employed by or otherwise associated with, a real estate broker, as a selling, renting, or listing agent or representative of the broker.

Sec. 5. Section 543B.7, Code 1995, is amended to read as follows:

543B.7 ACTS EXCLUDED FROM PROVISIONS.

The provisions of this chapter shall not apply to the sale, exchange, purchase, rental, lease, or advertising of any real estate in any of the following cases:

~~1. Owners or lessors, or to the regular employees thereof, with respect to the property owned and leased where such acts are performed in the regular course of or incident to the management of property owned and the investment therein.~~

1. A person who, as owner, spouse of an owner, general partner of a limited partnership, lessor, or prospective purchaser, or through another engaged by such person on a regular full-time basis, buys, sells, manages, or otherwise performs any act with reference to property owned, rented, leased, or to be acquired by such person.

2. By any person acting as attorney in fact under a duly executed and acknowledged power of attorney from the owner, authorizing to act on behalf of the owner or lessor to authorize the final consummation and execution of any contract for the sale, leasing, or exchange of real estate.

3. Nor shall the provisions of this chapter apply to an A licensed attorney admitted to practice in Iowa acting solely as an incident to the practice of law.

4. ~~The acts of one while~~ A person acting as a receiver, trustee in bankruptcy, administrator, executor, guardian, or while acting under court order or while acting under authority of a deed of trust, trust agreement, or will.

5. The acts of an auctioneer in conducting a public sale or auction. The auctioneer's role must be limited to establishing the time, place, and method of an auction, advertising the auction including a brief description of the property for auction and the time and place for the auction, and crying the property at the auction. If the auctioneer closes or attempts to close the sale of the property or otherwise engages in acts defined in sections 543B.3 and 543B.6, then the requirements of this chapter do apply to the auctioneer.

6. An isolated real estate rental transaction by an owner's representative on behalf of said the owner; such transaction not being made in the course of repeated and successive transactions of a like character.

7. The sale of time-share uses as defined in section 557A.2.

8. A person acting as a resident manager when such resident manager resides in the dwelling and is engaged in the leasing of real property in connection with their employment.

9. An officer or employee of the federal government, state government, or a political subdivision of the state, in the conduct of the officer's or employee's official duties.

10. A person employed by a public or private utility who performs an act with reference to property owned, leased, or to be acquired by the utility employing that person, where such an act is performed in the regular course of, or incident to, the management of the property and the investment in the property.

Sec. 6. Section 543B.34, subsection 9, Code 1995, is amended to read as follows:

9. a. Paying a commission or any part of a commission for performing any of the acts specified in this chapter to a person who is not a licensed broker or salesperson under this chapter or who is not engaged in the real estate business in another state or foreign country, provided that the provisions of this section shall not be construed to prohibit the payment of earned commissions to any of the following:

(1) The estate or heirs of a deceased real estate licensee when such licensee had a valid real estate license in effect at the time the commission was earned.

(2) A citizen of another country acting as a referral agent if that country does not license real estate brokers and if the Iowa licensee paying the commission or compensation obtains and maintains reasonable written evidence that the payee is a citizen of the other country, is not a resident of this country, and is in the business of brokering real estate in that other country.

(3) A corporation pursuant to paragraph "b".

b. However, a A broker may pay a commission to a corporation which is wholly owned, or owned with a spouse, by a salesperson or broker associate employed by or otherwise associated with the broker, if all of the following conditions are met:

a- (1) The corporation does not engage in real estate transactions as a third-party agent or in any other activity requiring a license under this chapter.

b- (2) The employing broker is not relieved of any obligation to supervise the employed licensee or any other requirement of this chapter or the rules adopted pursuant to this chapter.

c- (3) The employed broker associate or salesperson is not relieved from any personal civil liability for any licensed activities by interposing the corporate form.

Sec. 7. Section 543B.46, subsection 4, Code 1995, is amended to read as follows:

4. Each broker shall only deposit trust funds received on real estate or business opportunity transactions as defined in section 543B.6 in said the common trust account and shall not commingle the broker's personal funds or other funds in said the trust account with the exception that a broker may deposit and keep a sum not to exceed one five hundred dollars in said the account from the broker's personal funds, which sum shall be specifically identified and deposited to cover bank service charges relating to said the trust account.

RON J. CORBETT
Speaker of the House

LEONARD L. BOSWELL
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 252, Seventy-sixth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved May 4, 1995

TERRY E. BRANSTAD
Governor