

House Study Bill 109

Conference Committee Text

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1 1 Section 1. Section [543B.1](#), Code 1995, is amended by
1 2 striking the section and inserting in lieu thereof the
1 3 following:
1 4 543B.1 LICENSE MANDATORY.
1 5 A person shall not, directly or indirectly, with the
1 6 intention or upon the promise of receiving any valuable
1 7 consideration, offer, attempt, agree to perform, or perform
1 8 any single act as a real estate broker whether as a part of a
1 9 transaction or as an entire transaction, or represent oneself
1 10 as a real estate broker, broker associate, or salesperson,
1 11 without first obtaining a license and otherwise complying with
1 12 the requirements of this chapter.
1 13 Sec. 2. Section [543B.3](#), Code 1995, is amended by striking
1 14 the section and inserting in lieu thereof the following:
1 15 543B.3 BROKER ‐ DEFINITION.
1 16 As used in this chapter, "real estate broker" means a
1 17 person acting for another for a fee, commission, or other
1 18 compensation or promise, whether it be for all or part of a
1 19 person's time, and who engages directly or indirectly in any
1 20 of the following acts:
1 21 1. Sells, exchanges, purchases, rents, or leases real
1 22 estate.
1 23 2. Lists, offers, attempts, or agrees to list real estate
1 24 for sale, exchange, purchase, rent, or lease.
1 25 3. Advertises or holds oneself out as being engaged in the
1 26 business of selling, exchanging, purchasing, renting, leasing,
1 27 or managing real estate.
1 28 4. Negotiates, or offers, attempts, or agrees to
1 29 negotiate, the sale, exchange, purchase, rental, or lease of
1 30 real estate.
1 31 5. Buys, sells, offers to buy or sell, or otherwise deals
1 32 in options on real estate or improvements on real estate.
1 33 6. Collects, or offers, attempts, or agrees to collect,
1 34 rent for the use of real estate.
1 35 7. Assists or directs in the procuring of prospects,
2 1 intended to result in the sale, exchange, purchase, rental, or
2 2 leasing of real estate.
2 3 8. Assists or directs in the negotiation of any
2 4 transaction intended to result in the sale, exchange,
2 5 purchase, rental, or leasing of real estate.
2 6 Sec. 3. Section [543B.4](#), Code 1995, is amended to read as
2 7 follows:
2 8 543B.4 REAL ESTATE ‐ DEFINITION.
2 9

~~"Real estate" as~~

~~- As used in this chapter,~~

~~shall mean~~

~~- "real~~

2 10 estate" means real property wherever situated, and

~~shall~~

2 11

~~include~~

- includes any and all leaseholds or any other interest
2 12 or estate

~~therein~~

- in land, and business opportunities which
2 13 involve any interest in real property.

2 14 Sec. 4. Section 543B.5, Code 1995, is amended to read as
2 15 follows:

2 16 543B.5 OTHER DEFINITIONS.

2 17 As used in this chapter:

2 18 1. "Branch office" means a real estate broker's office
2 19 other than a principal place of business.

2 20

~~1.~~

- 2. "Broker associate" means a person who has a broker's
2 21 license but is licensed under, and employed by or otherwise
2 22 associated with, another broker as a salesperson.
2 23

~~2.~~

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

2 28 4. "Person" means an individual, partnership, association,
2 29 or corporation.

2 30 5. "Regular employee" means a person whose compensation is
2 31 fixed in advance, who does not receive a commission, who works
2 32 exclusively for the owner, and whose total compensation is
2 33 subject to state and federal withholding.
2 34

~~3.~~

- 6. "Salesperson" means a person who is licensed under,
2 35 and employed by or otherwise associated with, a real estate
3 1 broker, as a selling, renting, or listing agent or
3 2 representative of the broker.

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

3 5 543B.7 ACTS EXCLUDED FROM PROVISIONS.

3 6 The provisions of this chapter shall not apply to the sale,
3 7 exchange, purchase, rental, lease, or advertising of any real
3 8 estate in any of the following cases:

3 9

~~1. Owners or lessors, or to the regular employees thereof,~~

3 10

~~with respect to the property owned and leased where such acts~~

3 11

~~are performed in the regular course of or incident to the~~

3 12

~~management of property owned and the investment therein.~~

3 13 1. A person who, as owner, spouse of an owner, general
3 14 partner of a limited partnership, lessor, or prospective
3 15 purchaser, or through another engaged by such person on a
3 16 regular full-time basis, buys, sells, manages, or otherwise
3 17 performs any act with reference to property owned, rented,

3 18 leased, or to be acquired by such person.

3 19 2. By any person acting as attorney in fact under a duly
3 20 executed and acknowledged power of attorney from the owner,
3 21

~~authorizing~~

~~to act on behalf of the owner or lessor to~~

3 22 authorize the final consummation and execution of any contract
3 23 for the sale, leasing, or exchange of real estate.

3 24 3.

~~Nor shall the provisions of this chapter apply to an~~

~~A~~

3 25 licensed attorney admitted to practice in Iowa acting solely
3 26 as an incident to the practice of law.

3 27 4.

~~The acts of one while~~

~~A person~~ acting as a receiver,

3 28 trustee in bankruptcy, administrator, executor, guardian, or
3 29 while acting under court order or

~~while acting~~

~~under authority~~

3 30 of a deed of trust, trust agreement, or will.

3 31 5. The acts of an auctioneer in conducting a public sale
3 32 or auction. The auctioneer's role must be limited to
3 33 establishing the time, place, and method of an auction,
3 34 advertising the auction including a brief description of the
3 35 property for auction and the time and place for the auction,
4 1 and crying the property at the auction. If the auctioneer
4 2 closes or attempts to close the sale of the property or
4 3 otherwise engages in acts defined in sections 543B.3 and
4 4 543B.6, then the requirements of this chapter do apply to the
4 5 auctioneer.

4 6 6. An isolated real estate rental transaction by an
4 7 owner's representative on behalf of

~~said~~

~~the owner; such~~

4 8 transaction not being made in the course of repeated and
4 9 successive transactions of a like character.

4 10 7. The sale of time-share uses as defined in section
4 11 557A.2.

4 12 8. A person acting as a resident manager when such
4 13 resident manager resides in the dwelling and is engaged in the
4 14 leasing of real property in connection with their employment.

4 15 9. An officer or employee of the federal government, state
4 16 government, or a political subdivision of the state, in the
4 17 conduct of the officer's or employee's official duties.

4 18 10. A person employed by a public or private utility who
4 19 performs an act with reference to property owned, leased, or
4 20 to be acquired by the utility employing that person, where
4 21 such an act is performed in the regular course of, or incident
4 22 to, the management of the property and the investment in the
4 23 property.

4 24 Sec. 6. Section [543B.34](#), subsection 9, Code 1995, is
4 25 amended to read as follows:

4 26 9. a. Paying a commission or any part of a commission for
4 27 performing any of the acts specified in this chapter to a
4 28 person who is not a licensed broker or salesperson under this
4 29 chapter or who is not engaged in the real estate business in
4 30 another state or foreign country, provided that the provisions
4 31 of this section shall not be construed to prohibit the payment
4 32 of earned commissions to any of the following:

4 33 (1) The estate or heirs of a deceased real estate licensee
4 34 when such licensee had a valid real estate license in effect

4 35 at the time the commission was earned.

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

5 8 (3) A corporation pursuant to paragraph "b".

5 9 b.

~~However, a~~

- A broker may pay a commission to a
5 10 corporation which is wholly owned, or owned with a spouse, by
5 11 a salesperson or broker associate employed by or otherwise
5 12 associated with the broker, if all of the following conditions
5 13 are met:
5 14

~~a.~~

- (1) The corporation does not engage in real estate
5 15 transactions as a third-party agent or in any other activity
5 16 requiring a license under this chapter.
5 17

~~b.~~

- (2) The employing broker is not relieved of any
5 18 obligation to supervise the employed licensee or any other
5 19 requirement of this chapter or the rules adopted pursuant to
5 20 this chapter.
5 21

~~c.~~

- (3) The employed broker associate or salesperson is
5 22 not relieved from any personal civil liability for any
5 23 licensed activities by interposing the corporate form.
5 24 Sec. 7. Section [543B.46](#), subsection 4, Code 1995, is
5 25 amended to read as follows:
5 26 4. Each broker shall only deposit trust funds received on
5 27 real estate or business opportunity transactions as defined in
5 28 section 543B.6 in

~~said~~

- the common trust account and shall not
5 29 commingle the broker's personal funds or other funds in

~~said~~

- the trust account with the exception that a broker may deposit
5 30 and keep a sum not to exceed
5 31

~~one~~

- five hundred dollars in

~~said~~

- the account from the broker's personal funds, which sum shall
5 32 be specifically identified and deposited to cover bank service
5 33 charges relating to
5 34

~~said~~

- the trust account.

EXPLANATION

6 1 This bill amends provisions of chapter 543B relating to
6 2 real estate brokers and salespersons.

6 3 Section 543B.1, which establishes a licensing requirement
6 4 for real estate brokers and salespersons, is rewritten to

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

6 13 Section 543B.3, which establishes the definition of "real
6 14 estate broker", is rewritten to provide that "real estate
6 15 broker" means a person acting for another for a fee,
6 16 commission, or other compensation or promise, who engages in
6 17 any of the acts as specified in the section. The acts pertain
6 18 to transactions involving real estate, holding oneself out as
6 19 being in the business of conducting such transactions, and
6 20 collecting or offering to collect rent for the use of real
6 21 estate.

6 22 Section 543B.4, which establishes the definition of "real
6 23 estate", is amended to include all leaseholds or any other
6 24 interest in land, and business opportunities which involve any
6 25 interest in real property.

6 26 Section 543B.5, which establishes certain other definitions
6 27 used in the chapter, is amended as follows:

6 28 1. The definition of "broker associate" is amended to
6 29 provide that a broker associate must be licensed under another
6 30 broker as a salesperson.

6 31 2. The definition of "salesperson" is amended to provide
6 32 that a salesperson must be licensed under a real estate
6 33 broker.

6 34 3. New definitions are established for "branch office",
6 35 "person", and "regular employee".

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

7 13 Section 543B.34, subsection 9, which relates to actions of
7 14 a licensee which may result in the suspension or revocation of
7 15 a license, is amended to include improper payment of a
7 16 commission to a person in a foreign country, and also provides
7 17 that the section is not to be construed to prohibit the
7 18 payment of an earned commission to the estate or heirs of a
7 19 deceased real estate licensee, or a citizen of another country
7 20 acting as a referral agent if that country does not license
7 21 real estate brokers and that person is not a resident of this
7 22 country and is in the business of brokering real estate in
7 23 that other country.

7 24 Section 543B.46, subsection 4, is amended to provide that a
7 25 broker may deposit a sum not to exceed \$500 in the broker's
7 26 trust account. Current law provides that a broker may not
7 27 deposit a sum greater than \$100 in the account.

7 28 BACKGROUND STATEMENT

7 29 SUBMITTED BY THE AGENCY

7 30 This bill is intended to represent the Iowa real estate
7 31 commission's continuing desire to assist the public and
7 32 licensees by updating language and by clarifying the present
7 33 law to reduce confusion being experienced by the public,
7 34 licensees, and the legal profession. Section 543B.1 is
7 35 amended for clarification. Section 543B.3 is amended to more
8 1 clearly define the acts which constitute dealing in real

8 2 estate. Section 543B.5 is amended by creating definitions for
8 3 the terms "branch office", "regular employee", and "person",
8 4 and by amending the definition of "salesperson" to update and
8 5 clarify that definition. Section 543B.7 is amended to more
8 6 clearly define the exceptions to the mandatory license
8 7 requirement. Section 543B.34, subsection 9, is amended to
8 8 allow commission payment to the heirs of a deceased licensee,
8 9 and in accordance with the North American free trade
8 10 agreement, to a person licensed in a foreign country and to an
8 11 unlicensed agent in a foreign country that does not license
8 12 real estate agents. Section 543B.46 is amended to allow
8 13 brokers to have up to \$500 deposited in the broker's trust
8 14 account to cover bank-initiated service charges and other
8 15 bank-related expenses such as check printing. The \$100 limit
8 16 is no longer high enough to cover these expenses in many
8 17 cases.
8 18 LSB 1183DP 76
8 19 mj/sc/14.1