House File 541 - Reprinted

HOUSE FILE 541
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 125)

(As Amended and Passed by the House March 27, 2017)

A BILL FOR

An Act relating to licensed real estate professionals and real estate disclosure statements.

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

DIVISION I

REAL ESTATE LICENSEES

Section 1. Section 543B.15, subsection 3, Code 2017, is amended to read as follows:

3. *a.* An applicant for a real estate broker's or salesperson's license who has been convicted of an offense specified in this subsection shall not be considered for licensure until the following time periods have elapsed following completion of any applicable period of incarceration, or payment of a fine or fulfillment of any other type of sentence:

(1) For an offense which is classified as a felony, ~~two~~ an offense including or involving forgery, embezzlement, obtaining money under false pretenses, theft, arson, extortion, conspiracy to defraud, or other similar offense, or any other offense involving a criminal breach of fiduciary duty, five years.

(2) ~~Notwithstanding subparagraph (1), for offenses including or involving forgery, embezzlement, obtaining money under false pretenses, theft, arson, extortion, conspiracy to defraud, or other similar offense, any offense involving moral turpitude, or other offense involving a criminal breach of fiduciary duty, five years.~~ For any offense not described in subparagraph (1) involving moral turpitude, one year.

b. After expiration of the time periods specified in paragraph *"a"*, an application shall be considered by the commission pursuant to subsection 6 and may be denied on the grounds of the conviction. An applicant may request a hearing pursuant to section 543B.19 in the event of a denial.

c. For purposes of this section, *"convicted"* or *"conviction"* means a conviction for an indictable offense and includes a court's acceptance of a guilty plea, deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction in this state, or in any other state, territory, or district of the United States, or in any foreign jurisdiction. A copy of the record of conviction is conclusive evidence of such conviction.

Sec. 2. Section 543B.16, Code 2017, is amended to read as follows:

543B.16 Application forms.

1. Every applicant for a real estate ~~broker's~~ license shall apply in writing upon blanks prepared or furnished by the real estate commission. The real estate commission shall not require that a recent photograph of the applicant be attached to the application. The real estate commission shall only require an applicant to disclose on the application criminal convictions for crimes classified as indictable offenses.

2. Every applicant for a license shall furnish information setting forth the applicant's present mailing address~~, both of business and residence, a complete list of all former places where the applicant may have been engaged in business for a period of sixty days or more, during the last five years, accounting for such entire period~~ and electronic mail address.

3. ~~The commission shall prepare and furnish written application blanks for the salesperson's license requesting information as the commission may require. The commission shall not require that a recent photograph of the applicant be attached to the application. The application~~ Every applicant for ~~the~~ a salesperson's license shall ~~be accompanied by~~ furnish a written statement by the designated broker whose service the applicant is about to enter recommending that the license be granted to the applicant.

Sec. 3. Section 543B.29, subsection 4, Code 2017, is amended to read as follows:

4. A real estate broker's or salesperson's license shall be revoked following three violations of this section or section 543B.34 within a ~~five-year~~ three-year period.

Sec. 4. Section 543B.31, Code 2017, is amended to read as follows:

543B.31 Place of business — branch license.

Every real estate broker, except as provided in section 543B.22, shall maintain a place of business in this state. A real estate broker may maintain more than one place of business within the state and a broker may be the designated broker of more than one branch office within the state. If the real estate broker maintains more than one place of business within the state, a duplicate license shall be issued to such broker for each branch office maintained. ~~Provided, that if such broker be a partnership, association, corporation, professional corporation, or professional limited liability company a duplicate shall be issued to the members or officers thereof, and a~~ A fee determined by the real estate commission ~~in each case~~ shall be paid for each duplicate license.

Sec. 5. Section 543B.32, Code 2017, is amended to read as follows:

543B.32 Change of location.

Notice in writing, electronic or otherwise, shall be given to the real estate commission by each licensee of any change of principal business location, whereupon the commission shall issue a new license for the unexpired period upon the payment of a fee established by rule to cover the cost of issuing the license.

Sec. 6. Section 543B.33, Code 2017, is amended to read as follows:

543B.33 Salespersons — change of employment or association.

When any real estate salesperson is discharged or terminates employment or association with the real estate broker by whom the salesperson is employed, the real estate broker shall immediately deliver, ~~or~~ mail, or electronically submit to the real estate commission a copy of the real estate salesperson's license on the reverse side of which the ~~employing~~ designated broker shall set out the date ~~and cause~~ of termination ~~of employment~~. The ~~real estate~~ designated broker at the time of ~~mailing~~ submitting a copy of the real estate salesperson's license to the commission shall address a communication to the last known residence address of the real estate salesperson stating that a copy of the license has been delivered, ~~or~~ mailed, or electronically submitted to the commission. A copy of the communication to the real estate salesperson shall accompany the copy of the license when ~~mailed or delivered~~ submitted to the commission. It is unlawful for any real estate salesperson to perform any of the acts contemplated by this chapter either directly or indirectly under authority of a license from and after the date of receipt of a copy of the license by the commission. The commission shall, upon presentation of evidence by the salesperson that the salesperson has been employed by or is associated with another broker, issue another license for the balance of the current license period showing each change of employment or association. A fee as determined by the commission shall be charged for the issuance of the license. Not more than one license shall be issued to any real estate salesperson for the same period of time.

Sec. 7. Section 543B.34, subsection 1, unnumbered paragraph 1, Code 2017, is amended to read as follows:

The real estate commission may upon its own motion and shall upon the verified complaint in writing of any person, if the complaint together with evidence, documentary or otherwise, presented in connection with the complaint makes out a prima facie case, request commission staff or any other duly authorized representative or designee to investigate the actions of any real estate broker, real estate salesperson, or other person who assumes to act in ~~either~~ such capacity within this state. The commission may assess civil penalties against any person or entity, and may suspend or revoke a license issued under this chapter at any time if the licensee has by false or fraudulent representation obtained a license, or if the licensee or other person assuming to act in the capacity of a real estate broker or real estate salesperson, except for those actions exempt pursuant to section 543B.7, is found to be guilty of any of the following:

Sec. 8. Section 543B.34, subsection 1, paragraph i, subparagraph (1), subparagraph division (b), Code 2017, is amended to read as follows:

(b) A citizen of another country acting as a referral agent if that country does not license real estate brokers <u>or salespersons</u> and if the Iowa licensee paying the commission or consideration 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.

Sec. 9. Section 543B.34, subsection 1, paragraph i, subparagraph (2), subparagraph division (b), Code 2017, is amended to read as follows:

(b) 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.

Sec. 10. Section 543B.46, Code 2017, is amended to read as follows:

543B.46 Trust accounts.

1. Each real estate broker <u>who is in the practice of depositing funds in a trust account</u> shall maintain a common trust account in a ~~bank, savings association, or credit union~~ <u>federally insured depository institution</u> for the deposit of all down payments, earnest money deposits, or other trust funds received by the broker or the broker's salespersons on behalf of the broker's principal, except that a broker acting as a salesperson shall deposit these funds in the common trust account of the broker for whom the broker acts as salesperson. The account shall be an interest-bearing account. The interest on the account shall be transferred quarterly to the treasurer of state and transferred to the Iowa finance authority for deposit in the housing trust fund established in section

16.181 unless there is a written agreement between the buyer and seller to the contrary. The broker shall not benefit from interest received on funds of others in the broker's possession. A broker who is not in the practice of depositing funds in a trust account shall not be required to maintain a common trust account pursuant to this section.

2. Each broker required to maintain a trust account pursuant to this section shall notify the real estate commission of the name of ~~each bank, savings association, or credit union~~ the federally insured depository institution in which a trust account is maintained and also the name of the account on forms provided therefor.

3. Each broker required to maintain a trust account pursuant to this section shall authorize the real estate commission to examine each trust account and shall obtain the certification of the ~~bank, savings association, or credit union~~ federally insured depository institution attesting to each trust account and consenting to the examination and audit of each account by a duly authorized representative of the commission. The certification and consent shall be furnished on forms prescribed by the commission. This subsection does not apply to an individual farm account maintained in the name of the owner or owners for the purpose of conducting ongoing farm business whether it is conducted by the farm owner or by an agent or farm manager when the account is part of a farm management agreement between the owner and agent or manager. This subsection also does not apply to an individual property management account maintained in the name of the owner or owners for the purpose of conducting ongoing property management whether it is conducted by the property owner or by an agent or manager when the account is part of a property management agreement between the owner and agent or manager.

4. Each broker required to maintain a trust account pursuant to this section shall only deposit trust funds ~~received on real estate or business opportunity transactions~~ as directed

by the principal of a transaction constituting dealing in real estate as defined in section 543B.6 in the common trust account and shall not commingle the broker's personal funds or other funds in the trust account with the exception that a broker may deposit and keep a sum not to exceed ~~five hundred~~ one thousand dollars in the account from the broker's personal funds, which sum shall be specifically identified and deposited to cover bank service charges relating to the trust account.

5. A broker may maintain more than one trust account provided the commission is advised of said account as specified in subsections 2 and 3 above.

6. The commission shall verify on a test basis, a random sampling of the brokers, corporations, professional corporations, professional limited liability companies, and partnerships for their trust account compliance. The commission may upon reasonable cause, or as a part of or after an investigation, request or order a special report.

7. The examination of a trust account shall be conducted by the commission or the commission's authorized representative.

8. The commission shall adopt rules to ensure implementation of this section.

Sec. 11. Section 543B.53, Code 2017, is amended to read as follows:

543B.53 Application of chapter.

The provisions of this chapter which require successful completion of a real estate education course before being licensed as a real estate salesperson shall not apply to ~~persons who hold real estate salesperson's licenses on July 1, 1976 or to~~ the issuance of new licenses ~~to these persons under the provisions of~~ pursuant to section 543B.28.

Sec. 12. Section 543B.57, Code 2017, is amended to read as follows:

543B.57 Confirmation and disclosure of relationship.

1. A licensee shall not represent any party or parties to a transaction or otherwise as a licensee unless that

licensee makes ~~a disclosure to all parties to the transaction identifying which party that person represents in the transaction~~ an agency disclosure to the party or parties represented by the licensee.

2. *a.* The disclosure required in subsection 1 shall be made by the licensee at the time the licensee provides specific assistance to the client. A change in a licensee's representation that makes the initial disclosure incomplete, misleading, or inaccurate requires that a new disclosure be made immediately.

b. A written disclosure is required to be made to the client prior to an offer being made or accepted ~~by any party to a transaction~~. The written disclosure shall be acknowledged by separate signatures of ~~all parties to the transaction~~ the party or parties represented by the licensee prior to any offer being made or accepted by any party to a transaction.

c. For purposes of this section, *"specific assistance"* means eliciting or accepting confidential information about a party's real estate needs, motivation, or financial qualifications, or eliciting or accepting information involving a proposed or preliminary offer associated with specific real estate. *"Specific assistance"* does not mean an open house showing, preliminary conversations concerning price range, location, and property styles, or responding to general factual questions concerning properties which have been advertised for sale or lease.

3. The written agency disclosure form shall contain all of the following:

a. A statement of which party is the licensee's client or, if the licensee is providing brokerage services to more than one client as provided under section 543B.60, a statement of all persons who are the licensee's clients.

b. A statement of the licensee's duties to the licensee's client under section 543B.56, subsections 1 and 2.

c. Any additional information that the licensee determines is necessary to clarify the licensee's relationship to the licensee's client or customer.

4. This section does not prohibit a person from representing oneself.

5. The seller, in the listing agreement, may authorize the seller's licensee to disburse part of the licensee's compensation to other licensees, including a buyer's licensee solely representing the buyer. A licensee representing a buyer shall inform the listing licensee, if there is a listing licensee, either verbally or in writing, of the agency relationship before any negotiations are initiated. The obligation of either the seller or the buyer to pay compensation to a licensee is not determinative of the agency relationship.

Sec. 13. REPEAL. Section 543B.25, Code 2017, is repealed.

DIVISION II

REAL ESTATE DISCLOSURES

Sec. 14. Section 558A.1, Code 2017, is amended by adding the following new subsection:

NEW SUBSECTION. 01. "*Agent*" means an individual designated by a transferee to accept delivery of a disclosure statement from a transferor.

Sec. 15. Section 558A.1, subsection 4, paragraph e, Code 2017, is amended to read as follows:

e. A transfer made to a spouse, or to a person ~~in the lineal line~~ within the third degree of consanguinity or affinity of a person making the transfer.

Sec. 16. Section 558A.2, subsection 2, Code 2017, is amended to read as follows:

2. The disclosure statement shall be made by personal delivery, ~~or by~~ certified or registered mail, or electronic delivery to the transferee or to the transferee's agent. If delivery is electronic, acknowledgment of receipt shall be provided pursuant to rules adopted by the commission. The delivery may be made to the spouse of the transferee, unless

otherwise provided by the parties. If the disclosure statement is not timely delivered, the transferee may withdraw the offer or revoke the acceptance without liability, within three days following personal delivery of the statement or five days following electronic delivery or delivery by mail.