Senate Bill No. 452–Committee on Commerce and Labor

CHAPTER........

AN ACT relating to real estate; providing for a claim of a real estate broker against certain proceeds received from the disposition of commercial real estate for services provided by the broker pursuant to a brokerage agreement; providing that a real estate broker who records such a claim is subject to certain disciplinary action if the claim is determined by a district court to be frivolous and made without reasonable cause; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 645 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 21, inclusive, of this act.

Sec. 2. ***As used in sections 2 to 21, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, of this act have the meanings ascribed to them in those sections.***

Sec. 3. ***"Brokerage agreement" means a written contract between an owner and a real estate broker in which the owner agrees to pay a commission to the real estate broker for services provided by the broker relating to the disposition of commercial real estate as specified in the agreement.***

Sec. 4. ***"Commercial real estate" means any real estate located in this state. The term does not include:***

1. Improved real estate that consists of not more than four residential units;

2. Unimproved real estate for which not more than four residential units may be developed or constructed pursuant to any zoning regulations or any development plan applicable to the real estate; or

3. A single-family residential unit, including a condominium, townhouse or home within a subdivision, if the unit is sold, leased or otherwise conveyed unit by unit, regardless of whether the unit is part of a larger building or parcel that consists of more than four units.

Sec. 5. ***"Commission" means any fee or other compensation agreed upon by a real estate broker and an owner specified in a brokerage agreement.***

Sec. 6. ***"Disposition" means a voluntary conveyance or other transfer of title or any interest of an owner in any commercial real estate specified in a brokerage agreement.***

Sec. 7. ***"Escrow" has the meaning ascribed to it in subsection 3 of NRS 645A.010.***

Sec. 8. ***"Escrow agent" has the meaning ascribed to it in subsection 5 of NRS 645A.010.***

Sec. 9. ***"Owner" means a person who holds legal title to or any interest in any commercial real estate that is described in a brokerage***

agreement, including, without limitation, any assignee in interest and any agent of a person. The term does not include a mortgagee, trustee under or beneficiary of a deed of trust or an owner or holder of a claim that encumbers any real estate or any improvement on that real estate.

Sec. 10. *"Owner's net proceeds" means the gross receipts to which an owner is entitled upon the disposition of any commercial real estate specified in a brokerage agreement. The term does not include:*

1. Any money that is required to pay an encumbrance, claim or lien that has priority over a claim recorded pursuant to the provisions of section 14 of this act other than an encumbrance, claim or lien that the person to whom the commercial real estate is conveyed or otherwise transferred authorizes to remain after the disposition of the real estate; or

2. Any costs incurred by the owner to close escrow for that commercial real estate.

Sec. 11. *1. A real estate broker has a claim upon the owner's net proceeds from the disposition of commercial real estate for any commission earned by the real estate broker pursuant to a brokerage agreement. For the purposes of this subsection, a commission shall be deemed to be earned when the real estate broker has performed his duties pursuant to the brokerage agreement.*

2. The claim belongs to the real estate broker named in the brokerage agreement and not to an employee or independent contractor of the real estate broker.

3. A claim that is recorded pursuant to the provisions of section 14 of this act:

(a) Is a claim upon personal property and does not attach to the title of any real property.

(b) May be waived if, on or before the date the brokerage agreement is executed, the real estate broker signs a written waiver of his right to enforce the claim. The waiver must be printed in upper case letters and must be limited to one transaction. A person other than the real estate broker may not waive the rights of the real estate broker pursuant to this section, regardless of whether that person may execute and bind the real estate broker to a brokerage agreement.

(c) May not be enforced by a person other than the real estate broker and the owner.

4. A claim of a third party may not be brought or otherwise adjudicated pursuant to the provisions of sections 2 to 21, inclusive, of this act.

5. The recording or enforcement of a claim by a real estate broker pursuant to the provisions of sections 2 to 21, inclusive, of this act does not relieve the owner of his obligation to close escrow for any commercial real estate.

Sec. 12. *1. Except as otherwise provided in subsection 3, if a real estate broker wishes to enforce a claim pursuant to the provisions of* *sections 2 to 21, inclusive, of this act, he shall, within 7 days after a commission is earned by the real estate broker pursuant to a brokerage agreement, provide a written notice of the claim to:*

(a) The owner of the commercial real estate specified in the brokerage agreement; and

(b) The escrow agent closing the transaction for the commercial real estate.

2. A real estate broker who fails to provide a notice of a claim within the period specified in subsection 1 may not enforce the claim pursuant to the provisions of sections 2 to 21, inclusive, of this act.

3. A real estate broker is not required to provide a written notice of a claim to an escrow agent pursuant to this section if the identity of the escrow agent is unknown to the real estate agent at the time the notice is provided by the real estate broker to the owner pursuant to paragraph (a) of subsection 1.

Sec. 13. *1. A notice of claim specified in section 12 of this act must include:*

(a) The name of the owner of the commercial real estate;

(b) The name of the person who executed the brokerage agreement, if other than the owner;

(c) The name, business name, if any, and the license number of the real estate broker;

(d) The amount claimed by the real estate broker;

(e) A detailed description of the commercial real estate; and

(f) A copy of the brokerage agreement pursuant to which the real estate broker claims a commission.

2. The notice must:

(a) Be verified by the oath of the real estate broker who provides the notice; and

(b) Include an acknowledgment by the real estate broker.

Sec. 14. *1. If an owner is served with a notice of a claim pursuant to section 12 of this act, the owner shall, within 5 days after service of the notice but not later than 7 days before the disposition of the commercial real estate:*

(a) Confirm or deny the claim set forth in the notice; and

(b) Notify, in writing, the real estate broker who provided the notice to the owner.

2. If the owner confirms the claim and notifies the real estate broker of that fact pursuant to subsection 1, the owner may instruct the escrow agent for the commercial real estate to pay to the real estate broker the amount claimed by the real estate broker in the notice of the claim.

3. If the owner fails to notify the real estate broker within the period specified in subsection 1 or notifies the real estate broker that he denies the claim, the real estate broker may record the notice of the claim in the office of the county recorder where the commercial real estate or any portion of the commercial real estate is located.

Sec. 15. ***1. Except as otherwise provided in this subsection, if:***

(a) An escrow agent receives a notice of a claim pursuant to section 12 of this act;

(b) A notice of claim is recorded pursuant to section 14 of this act; or

(c) An escrow agent has actual notice of a claim specified in paragraph (b),

the escrow agent shall reserve from the owner's net proceeds an amount that is equal to the amount claimed by the real estate broker in his recorded claim. If the amount of the owner's net proceeds is insufficient to satisfy the amount of the claim, the escrow agent shall reserve the entire amount of the owner's net proceeds. In determining whether the amount of the owner's net proceeds is insufficient to satisfy the amount of the claim, the escrow agent may consider any encumbrance, claim or lien that has priority over the claim of the real estate broker pursuant to section 18 of this act.

2. If the escrow agent determines that the amount of the owner's net proceeds is insufficient to satisfy the amount of the claim, the escrow agent:

(a) Shall, within 3 days after making that determination but not later than the close of escrow, notify the real estate broker of that fact in writing; and

(b) Shall not release to the owner any portion of the owner's net proceeds unless the escrow agent receives a copy of the written agreement executed by the owner and the real estate broker authorizing the escrow agent to release those proceeds to the owner.

3. Except as otherwise provided in paragraph (b) of subsection 2 and section 17 of this act, if an owner's net proceeds or any portion of an owner's net proceeds are reserved pursuant to this section, the escrow agent who reserves those proceeds shall not release the proceeds to any person until the rights of the owner and the real estate broker are determined pursuant to section 17 of this act.

4. A reservation of an owner's net proceeds or any portion of an owner's net proceeds pursuant to this section does not relieve the owner of his obligation to close escrow for the commercial real estate.

Sec. 16. ***1. If:***

(a) A notice of a claim is recorded pursuant to section 14 of this act;

(b) An escrow agent has reserved an owner's net proceeds or any portion of an owner's net proceeds pursuant to section 15 of this act; and

(c) Escrow for the disposition of the commercial real estate has closed,

the escrow agent may, in accordance with the provisions of NRS 645A.177, deposit with the district court of the county where the claim is recorded the amount of the owner's net proceeds reserved by him pursuant to section 15 of this act.

2. If an escrow agent deposits an owner's net proceeds with a district court pursuant to subsection 1, the escrow agent is discharged from any further liability concerning those proceeds.

Sec. 17. ***1. If a claim is recorded pursuant to section 14 of this act, the owner against whom the claim is recorded may:***

(a) File a civil action concerning the claim in the district court of the county where the commercial real estate or a portion of the commercial real estate is located; and

(b) At the time the summons is issued or at any time before the complaint is answered by the real estate broker, apply to the district court for an order directing the real estate broker to appear before the court to show cause why the claim should not be dismissed.

2. If the court issues an order directing the real estate broker to appear before the court, the order must:

(a) State that, if the real estate broker fails to appear at the time and place specified in the order, the claim will be dismissed with prejudice pursuant to subsection 3;

(b) Specify a time and date on which the court will conduct a hearing on the matter; and

(c) Establish a period within which the owner must serve a notice of the order on the real estate broker and the escrow agent.

3. If the real estate broker fails to appear at the time and place specified in the order issued pursuant to subsection 2, the court shall issue an order:

(a) Dismissing the claim with prejudice;

(b) Canceling the notice of the claim recorded pursuant to section 14 of this act; and

(c) Requiring the real estate broker to record in the office of the county recorder of the county where the notice of the claim is recorded a copy of the order of cancellation issued pursuant to paragraph (b).

An order issued pursuant to this subsection must state that the cancellation of the notice of the claim has the same effect as an expungement of that notice.

4. If a hearing is conducted pursuant to this section, the court shall consider the showing made by the parties at the hearing and shall make a preliminary determination of which party, with reasonable probability, is entitled to the amount of the owner's net proceeds claimed by the broker pending final adjudication of the claims of the parties.

5. If, after the hearing, the district court determines there is a reasonable probability that:

(a) The real estate broker is entitled to the amount of the owner's net proceeds claimed by him, the court shall, if those proceeds:

(1) Have been deposited with the court by the escrow agent pursuant to section 16 of this act, release the proceeds to the real estate broker; or

(2) Have not been deposited with the court by the escrow agent pursuant to that section, order the escrow agent to release the proceeds to the real estate broker; or

(b) The owner is entitled to the amount of the owner's net proceeds claimed by the real estate broker, the court shall, if those proceeds:

(1) Have been deposited with the court by the escrow agent pursuant to that section, release the proceeds to the owner; or

(2) Have not been deposited with the court by the escrow agent, order the escrow agent to release the proceeds to the owner.

6. If the owner believes the claim is frivolous and is made without reasonable cause, the owner may include in the application submitted pursuant to subsection 1 a request for an order directing the real estate broker to appear and show cause why the claim should not be dismissed on those grounds. If the court issues such an order, any hearing conducted pursuant to that order must be conducted in the manner provided in NRS 108.2275. In addition to any remedy set forth in that section, the court may award compensatory damages to the owner.

7. The prevailing party in any civil action filed or hearing conducted pursuant to this section is entitled to receive:

(a) Any costs incurred by that party for the civil action or hearing; and

(b) A reasonable attorney's fee.

8. Proceedings conducted pursuant to this section do not affect any rights or remedies otherwise available to the owner or the real estate broker.

Sec. 18. *1. Except as otherwise provided in subsection 2, a claim that is recorded pursuant to the provisions of section 14 of this act has priority over any other encumbrance, claim or lien, if the claim of the real estate broker is recorded before the encumbrance, claim or lien.*

2. The provisions of subsection 1 do not apply to a lien recorded pursuant to the provisions of NRS 108.221 to 108.246, inclusive.

Sec. 19. *If a real estate broker records a claim pursuant to the provisions of section 14 of this act and that claim is paid or otherwise satisfied pursuant to that section, the real estate broker shall, within 3 days after the claim is paid or otherwise satisfied, record a written release of that claim. The release must be recorded in the office of the county recorder where the claim was recorded.*

Sec. 20. *Any notice that is required to be served pursuant to the provisions of sections 2 to 21, inclusive, of this act must be served in the manner provided in NRS 108.227.*

Sec. 21. *An escrow agent:*

1. Is not liable in any civil action for any action taken to comply with the provisions of sections 2 to 21, inclusive, of this act.

2. May charge and collect a fee from an owner or real estate broker for any services provided by the escrow agent to the owner or real estate broker pursuant to sections 2 to 21, inclusive, of this act.

Sec. 22. NRS 645.633 is hereby amended to read as follows:

645.633 The commission may take action pursuant to NRS 645.630 against any person subject to that section who is guilty of:

1. Willfully using any trade name, service mark or insigne of membership in any real estate organization of which the licensee is not a member, without the legal right to do so.

2. Violating any order of the commission, any agreement with the division, any of the provisions of this chapter, chapter 116, 119, 119A, 119B, 645A or 645C of NRS or any regulation adopted thereunder.

3. Paying a commission, compensation or a finder's fee to any person for performing the services of a broker, broker-salesman or salesman who has not ~~[first]~~ secured his license pursuant to this chapter. This subsection does not apply to payments to a broker who is licensed in his state of residence.

4. A felony, or has entered a plea of guilty, guilty but mentally ill or nolo contendere to a charge of felony or any crime involving fraud, deceit, misrepresentation or moral turpitude.

5. Guaranteeing, or having authorized or permitted any person to guarantee, future profits which may result from the resale of real property.

6. Failure to include a fixed date of expiration in any written brokerage agreement or to leave a copy of the brokerage agreement with the client.

7. Accepting, giving or charging any undisclosed commission, rebate or direct profit on expenditures made for a client.

8. Gross negligence or incompetence in performing any act for which he is required to hold a license pursuant to this chapter, chapter 119, 119A or 119B of NRS.

9. Any other conduct which constitutes deceitful, fraudulent or dishonest dealing.

10. Any conduct which took place before ~~[his being]~~ ***he became*** licensed, which was in fact unknown to the division and which would have been grounds for denial of a license had the division been aware of the conduct.

11. Knowingly permitting any person whose license has been revoked or suspended to act as a real estate broker, broker-salesman or salesman, with or on behalf of the licensee.

12. Recording or causing to be recorded a claim pursuant to the provisions of sections 2 to 21, inclusive, of this act that is determined by a district court to be frivolous and made without reasonable cause pursuant to section 17 of this act.

Action may also be taken pursuant to NRS 645.630 against a person ***who is*** subject to that section for the suspension or revocation of a real estate broker's, broker-salesman's or salesman's license issued to him by any other jurisdiction.

Sec. 23. NRS 645A.175 is hereby amended to read as follows:

645A.175 1. Except as otherwise provided in subsection 2 or in the escrow agreement between the parties and the holder of the escrow, upon the close of an escrow for the sale of real property or on the date the escrow is scheduled to close if it has not closed, each party shall execute the documents necessary to release the money deposited in the escrow.

2. A party may refuse to execute a document necessary to release the money deposited in the escrow only if a good faith dispute exists concerning that money.

3. ~~[If]~~ ***Except as otherwise provided in sections 2 to 21, inclusive, of this act, if*** a party refuses to execute a document necessary to release the money deposited in the escrow within 30 days after the holder of the escrow makes a written request for the execution, the party injured by the ~~[other party's]~~ failure ***of the other party*** to execute the document may collect from that party:

(a) Actual damages of not less than $100 nor more than 1 percent of the purchase price of the real property for which the money was deposited in the escrow, whichever is greater;

(b) The money deposited in the escrow which was not held to resolve a good faith dispute concerning the sale of the property; and

(c) A reasonable attorney's fee.

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