SENATE BILL NO. 150

INTRODUCED BY BISHOP

BY REQUEST OF THE DEPARTMENT OF COMMERCE

IN THE SENATE

JANUARY 16, 1989 INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.

FIRST READING.

- JANUARY 21, 1989 COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
- JANUARY 23, 1989 PRINTING REPORT.

ON MOTION, TAKEN FROM SECOND READING AND REREFERRED TO COMMITTEE ON BUSINESS AND INDUSTRY.

JANUARY 25, 1989 COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 26, 1989 PRINTING REPORT.

- JANUARY 27, 1989 SECOND READING, DO PASS.
- JANUARY 28, 1989 ENGROSSING REPORT.

JANUARY 30, 1989 THIRD READING, PASSED. AYES, 48; NOES, 1.

TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 30, 1989 INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT.

FEBRUARY 20, 1989 FIRST READING.

MARCH 2, 1989 COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.

MARCH 4, 1989	SECOND READING, CONCURRED IN.
MARCH 6, 1989	THIRD READING, CONCURRED IN. AYES, 87; NOES, 8.
	RETURNED TO SENATE.
	IN THE SENATE
MARCH 7, 1989	RECEIVED FROM HOUSE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

LC 0513/01

LC 0513/01

este BILL NO. 150 1 INTRODUCED BY 2 3 BY REQUEST OF THE DEPARTMENT OF COMMERCE 4 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO LIMIT THE 6 ATTORNEY-IN-FACT EXEMPTION FROM REAL ESTATE BROKER AND 7 SALESMAN LICENSE REQUIREMENTS: AND AMENDING SECTION 8 37-51-103, MCA." 9 10 WHEREAS, the Legislature of the State of Montana finds 11 that there presently is an attorney-in-fact exemption from 12 the requirement that a person be licensed as a real estate 13 broker or salesman: 14 WHEREAS, the Legislature of the State of Montana finds 15 that there is a potential use of the attorney-in-fact 16 exemption by certain persons on a regular or consistent basis, thereby allowing those persons to avoid license 17 requirements and negating adequate safeguards to the public. 18 19 THEREFORE, the Legislature of the State of Montana 20 finds it appropriate to limit the attorney-in-fact 21 exemption. 22 23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 24 Section 1. Section 37-51-103, MCA, is amended to read:

25 "37-51-103. Exemptions. A single act performed for a



commission or compensation of any kind in the buying,
 selling, exchanging, leasing, or renting of real estate or
 in negotiating therefor for others, except as hereinafter
 specified, shall constitute the person performing any of
 such acts a real estate broker or real estate salesman. The
 provisions of this chapter, however, shall not:

7 (1) apply to any person who, as owner or lessor, shall 8 perform any of the aforesaid acts with reference to property 9 owned or leased by himself or to an auctioneer employed by 10 the owner or lessor to aid and assist in conducting a public 11 sale held by such owner or lessor;

12 (2) apply to any person acting as attorney-in-fact 13 under the duly executed power of attorney from the owner of 14 any real estate authorizing the final consummation of any 15 contract for the purchase, sale, exchange, renting, or leasing of any real estate, unless the person acting as 16 17 attorney-in-fact does so regularly or consistently for any 18 owner or lessor, for or with the expectation of receiving a 19 fee, commission, or other valuable consideration; 20 (3) be construed to include in any way the services rendered by any attorney at law in the performance of his 21 22 duty as such attorney at law; 23 (4) apply to any person duly appointed by a court for

24 purpose of evaluation or appraising an estate in a probate 25 matter;

> INTRODUCED BILL -2- SBI50

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1 (5) be held to include, while acting as such, a receiver, a trustee in bankruptcy, an administrator or 2 executor, any person selling real estate under order of any 3 4 court, a trustee under a trust agreement, deed of trust, or will, or an auctioneer employed by a receiver, trustee in 5 bankruptcy, administrator, executor, or trustee to aid and 6 7 assist in conducting a public sale held by any such officer; 8 (6) apply to public officials in the conduct of their

9 official duties;

10 (7) apply to any person, partnership, association, or 11 corporation, foreign or domestic, performing any act with 12 respect to prospecting, leasing, drilling, or operating land 13 for hydrocarbons and hard minerals or disposing of any 14 hydrocarbons, hard minerals, or mining rights therein, 15 whether upon a royalty basis or otherwise; or

(8) apply to persons acting as managers of housing
complexes for low-income persons, which are subsidized,
directly or indirectly, by this state or an agency or
subdivision thereof or by the government of the United
States or an agency thereof."

21 <u>NEW SECTION.</u> Section 2. Extension of authority. Any 22 existing authority to make rules on the subject of the 23 provisions of [this act] is extended to the provisions of 24 [this act].

-End-

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51st Legislature

SB 0150/02

APPROVED BY COMM. ON BUSINESS & INDUSTRY

1	SENATE BILL NO. 150
2	INTRODUCED BY BISHOP
3	BY REQUEST OF THE DEPARTMENT OF COMMERCE
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO bimit Generally
6	REVISE THE ATTORNEY-IN-FACT EXEMPTION FROM REAL ESTATE
7	BROKER AND SALESMAN LICENSE REQUIREMENTS; AND AMENDING
8	SECTION 37-51-103, MCA."
9	
10	WHEREAS, the Legislature of the State of Montana finds
11	that there presently is an attorney-in-fact exemption from
12	the requirement that a person be licensed as a real estate
13	broker or salesman; <u>AND</u>
14	WHEREAS, the Legislature of the State of Montana finds
15	that there is a potential use of the attorney-in-fact
16	exemption by certain persons on a regular or consistent
17	basis, thereby allowing those persons to avoid license
18	requirements and negating adequate safeguards to the
19	public ; AND
20	THEREPORE7thebegistatureoftheState-of-Montana
21	findsitappropriatetolimittheattorney-in-fact
22	exemption.
23	WHEREAS, THE LEGISLATURE OF THE STATE OF MONTANA FINDS
24	THE PRESENT ATTORNEY-IN-FACT EXEMPTION IS LIMITED TO ONE
25	BASED ON A SPECIAL POWER OF ATTORNEY; AND



1 WHEREAS, THE LEGISLATURE OF THE STATE OF MONTANA FINDS 2 THAT THE ATTORNEY-IN-FACT EXEMPTION FROM THE REQUIREMENT THAT A PERSON BE LICENSED AS A REAL ESTATE BROKER OR 3 SALESMAN SHOULD BE EXPANDED TO INCLUDE A GENERAL POWER OF 4 5 ATTORNEY. THEREFORE, THE LEGISLATURE OF THE STATE OF MONTANA б 7 FINDS IT APPROPRIATE TO EXPAND THE ATTORNEY-IN-FACT 8 EXEMPTION TO INCLUDE ONE BASED ON A GENERAL POWER OF 9 ATTORNEY AND TO LIMIT ALL ATTORNEY-IN-FACT EXEMPTIONS TO 10 OCCASIONAL USE UNDER CIRCUMSTANCES IN WHICH IT IS REASONABLY CERTAIN THAT ADEQUATE SAFEGUARDS TO THE PUBLIC ARE 11 12 MAINTAINED. 13 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 15 Section 1. Section 37-51-103, MCA, is amended to read: 16 "37-51-103. Exemptions. A single act performed for a commission or compensation of any kind in the buying, 17 18 selling, exchanging, leasing, or renting of real estate or 19 in negotiating therefor for others, except as hereinafter 20 specified, shall constitute the person performing any of 21 such acts a real estate broker or real estate salesman. The 22 provisions of this chapter, however, shall not:

23 (1) apply to any person who, as owner or lessor, shall 24 perform any of the aforesaid acts with reference to property 25 owned or leased by himself or to an auctioneer employed by

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SB 150 SECOND READING

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the owner or lessor to aid and assist in conducting a public
 sale held by such owner or lessor;

З (2) apply to any person acting as attorney-in-fact under the A duly executed SPECIAL OR GENERAL power of 4 attorney from the owner of any real estate authorizing the 5 6 final consummation of any contract for the purchase, sale, 7 exchange, renting, or leasing of any real estate, unless the 8 person acting as attorney-in-fact does so regularly or 9 consistently for any-owner-or-lessor A PERSON OR PERSONS, 10 for or with the expectation of receiving a fee, commission, or other valuable consideration IN CONJUNCTION WITH A 11 12 BUSINESS OR FOR THE PURPOSE OF AVOIDING LICENSE 13 REOUIREMENTS;

14 (3) be construed to include in any way the services
15 rendered by any attorney at law in the performance of his
16 duty as such attorney at law;

17 (4) apply to any person duly appointed by a court for
18 purpose of evaluation or appraising an estate in a probate
19 matter;

(5) be held to include, while acting as such, a
receiver, a trustee in bankruptcy, an administrator or
executor, any person selling real estate under order of any
court, a trustee under a trust agreement, deed of trust, or
will, or an auctioneer employed by a receiver, trustee in
bankruptcy, administrator, executor, or truscee to aid and

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SB 150

1 assist in conducting a public sale held by any such officer;
2 (6) apply to public officials in the conduct of their
3 official duties;

4 (7) apply to any person, partnership, association, or 5 corporation, foreign or domestic, performing any act with 6 respect to prospecting, leasing, drilling, or operating land 7 for hydrocarbons and hard minerals or disposing of any 8 hydrocarbons, hard minerals, or mining rights therein, 9 whether upon a royalty basis or otherwise; or

10 (8) apply to persons acting as managers of housing 11 complexes for low-income persons, which are subsidized, 12 directly or indirectly, by this state or an agency or 13 subdivision thereof or by the government of the United 14 States or an agency thereof."

NEW SECTION. Section 2. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

-End-

- 4 -

SB 150

51st Legislature SB 0150/03 RE-REFFERED AND APPROVED BY COMM. ON BUSINESS & INDUSTRY AS AMENDED 1 SENATE BILL NO. 150 2 INTRODUCED BY BISHOP 3 BY REQUEST OF THE DEPARTMENT OF COMMERCE 4 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO SIMIT GENERALLY 6 REVISE THE ATTORNEY-IN-FACT EXEMPTION FROM REAL ESTATE 7 BROKER AND SALESMAN LICENSE REQUIREMENTS; AND AMENDING 8 SECTION 37-51-103, MCA." 9 10 WHEREAS, the Legislature of the State of Montana finds 11 that there presently is an attorney-in-fact exemption from 12 the requirement that a person be licensed as a real estate 13 broker or salesman; AND 14 WHEREAS, the Legislature of the State of Montana finds 15 that there is a potential use of the attorney-in-fact 16 exemption by certain persons on a regular or consistent 17 basis, thereby allowing those persons to avoid license 18 requirements and negating adequate safeguards to the 19 public; AND 20 THEREPORE, -- the -- begislature -- of -- the -- State-of-Montana 21 finds--it--appropriate---to---limit---the---attorney-in-fact 22 exemption-23 WHEREAS, THE LEGISLATURE OF THE STATE OF MONTANA FINDS 24 THE PRESENT ATTORNEY-IN-FACT EXEMPTION IS LIMITED TO ONE 25 BASED ON A SPECIAL POWER OF ATTORNEY; AND



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> -2- SECOND READING SECOND PRINTING

the owner or lessor to aid and assist in conducting a public
 sale held by such owner or lessor;

3 (2) apply to any person acting as attorney-in-fact 4 under the A duly executed SPECIAL OR GENERAL power of 5 attorney from the owner of any real estate authorizing the 6 final-consummation-of-any-contract-for-the purchase, sale, 7 exchange, renting, or leasing of any real estate, unless the 8 person acting as attorney-in-fact does so regularly or 9 consistently for any-owner-or-lessor A PERSON OR PERSONS, 10 for or with the expectation of receiving a fee, commission, 11 or other valuable consideration IN CONJUNCTION WITH A 12 BUSINESS OR FOR THE PURPOSE OF AVOIDING LICENSE REQUIREMENTS: 13

14 (3) be construed to include in any way the services
15 rendered by any attorney at law in the performance of his
16 duty as such attorney at law;

17 (4) apply to any person duly appointed by a court for
18 purpose of evaluation or appraising an estate in a probate
19 matter;

20 (5) be held to include, while acting as such, a 21 receiver, a trustee in bankruptcy, an administrator or 22 executor, any person selling real estate under order of any 23 court, a trustee under a trust agreement, deed of trust, or 24 will, or an auctioneer employed by a receiver, trustee in 25 bankruptcy, administrator, executor, or trustee to aid and assist in conducting a public sale held by any such officer;
 (6) apply to public officials in the conduct of their
 official duties;

(7) apply to any person, partnership, association, or
corporation, foreign or domestic, performing any act with
respect to prospecting, leasing, drilling, or operating land
for hydrocarbons and hard minerals or disposing of any
hydrocarbons, hard minerals, or mining rights therein,
whether upon a royalty basis or otherwise; or

(8) apply to persons acting as managers of housing
complexes for low-income persons, which are subsidized,
directly or indirectly, by this state or an agency or
subdivision thereof or by the government of the United
States or an agency thereof."

15 <u>NEW SECTION.</u> Section 2. Extension of authority. Any 16 existing authority to make rules on the subject of the 17 provisions of [this act] is extended to the provisions of 18 [this act].

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SB 0150/03

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SB 0150/03

1	SENATE BILL NO. 150	1	WHEREA
2	INTRODUCED BY BISHOP	2	THAT THE AT
3	BY REQUEST OF THE DEPARTMENT OF COMMERCE	3	THAT A PE
4		4	SALESMAN SH
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO bimit <u>Generally</u>	5	ATTORNEY.
6	REVISE THE ATTORNEY-IN-FACT EXEMPTION FROM REAL ESTATE	6	THEREF
7	BROKER AND SALESMAN LICENSE REQUIREMENTS; AND AMENDING	7	FINDS IT
8	SECTION 37-51-103, MCA."	8	EXEMPTION
9		9	ATTORNEY AN
10	WHEREAS, the Legislature of the State of Montana finds	10	OCCASIONAL
11	that there presently is an attorney-in-fact exemption from	11	CERTAIN T
12	the requirement that a person be licensed as a real estate	12	MAINTAINED.
13	broker or salesman; AND	13	
14	WHEREAS, the Legislature of the State of Montana finds	14	BE IT ENACT
15	that there is a potential use of the attorney-in-fact	15	Sectio
16	exemption by certain persons on a regular or consistent	16	-37-51
17	basis, thereby allowing those persons to avoid license	17	commission
18	requirements and negating adequate safeguards to the	18	selling, ex
19	public ; AND	19	in negotia
20	THERBFORB;thebegislatureoftheState-of-Montana	20	specified,
21	findsitappropriatetolimittheattorney-in-fact	21	such acts
22	exemption.	22	provisions
23	WHEREAS, THE LEGISLATURE OF THE STATE OF MONTANA FINDS	23	(1) a
24	THE PRESENT ATTORNEY-IN-FACT EXEMPTION IS LIMITED TO ONE	24	perform any
25	BASED ON A SPECIAL POWER OF ATTORNEY; AND	25	owned or le

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2	THAT THE ATTORNEY-IN-FACT EXEMPTION FROM THE REQUIREMENT
Э	THAT A PERSON BE LICENSED AS A REAL ESTATE BROKER OR
4	SALESMAN SHOULD BE EXPANDED TO INCLUDE A GENERAL POWER OF
5	ATTORNEY.
6	THEREFORE, THE LEGISLATURE OF THE STATE OF MONTANA
7	FINDS IT APPROPRIATE TO EXPAND THE ATTORNEY-IN-FACT
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9	ATTORNEY AND TO LIMIT ALL ATTORNEY-IN-FACT EXEMPTIONS TO
10	OCCASIONAL USE UNDER CIRCUMSTANCES IN WHICH IT IS REASONABLY
11	CERTAIN THAT ADEQUATE SAFEGUARDS TO THE PUBLIC ARE
12	MAINTAINED.
13	
14	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
15	Section 1. Section 37-51-103, MCA, is amended to read:
16	37-51-103. Exemptions. A single act performed for a
17	commission or compensation of any kind in the buying,
18	selling, exchanging, leasing, or renting of real estate or
19	in negotiating therefor for others, except as hereinafter
20	specified, shall constitute the person performing any of
21	such acts a real estate broker or real estate salesman. The
22	provisions of this chapter, however, shall not:
23	(1) apply to any person who, as owner or lessor, shall
24	perform any of the aforesaid acts with reference to property

25 owned or leased by himself or to an auctioneer employed by

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the owner or lessor to aid and assist in conducting a public
 sale held by such owner or lessor;

3 (2) apply to any person acting as attorney-in-fact 4 under the A duly executed SPECIAL OR GENERAL power of 5 attorney from the owner of any real estate authorizing the 6 final-consummation-of-any-contract-for-the purchase, sale, 7 exchange, renting, or leasing of any real estate, unless the 8 person acting as attorney-in-fact does so regularly or 9 consistently for any-owner-or-lessor A PERSON OR PERSONS, 10 for or with the expectation of receiving a fee, commission, 11 or other valuable consideration IN CONJUNCTION WITH A 12 BUSINESS OR FOR THE PURPOSE OF AVOIDING LICENSE REQUIREMENTS: 13

14 (3) be construed to include in any way the services
15 rendered by any attorney at law in the performance of his
16 duty as such attorney at law;

17 (4) apply to any person duly appointed by a court for
18 purpose of evaluation or appraising an estate in a probate
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receiver, a trustee in bankruptcy, an administrator or
executor, any person selling real estate under order of any
court, a trustee under a trust agreement, deed of trust, or
will, or an auctioneer employed by a receiver, trustee in
bankruptcy, administrator, executor, or trustee to aid and

assist in conducting a public sale held by any such officer;
 (6) apply to public officials in the conduct of their
 official duties;

4 (7) apply to any person, partnership, association, or 5 corporation, foreign or domestic, performing any act with 6 respect to prospecting, leasing, drilling, or operating land 7 for hydrocarbons and hard minerals or disposing of any 8 hydrocarbons, hard minerals, or mining rights therein, 9 whether upon a royalty basis or otherwise; or

(8) apply to persons acting as managers of housing
complexes for low-income persons, which are subsidized,
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subdivision thereof or by the government of the United

14 States or an agency thereof."

15 <u>NEW SECTION.</u> Section 2. Extension of authority. Any 16 existing authority to make rules on the subject of the 17 provisions of [this act] is extended to the provisions of 18 [this act].

-End-

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SB 150

SENATE COMMITTEE OF THE WHOLE AMENDMENT

February 10, 1989 4:08 pm

Mr. President: I move to amend^{the} Senate Committee on Business and Industry amendments to HB 150 (third reading copy -- blue) dated February 6, 1989, as follows:

1. Page 1.
Strike: section 2 in its entirety

2. Page 2, <u>NEW SECTION.</u> Following: "Section" Strike: "3" Insert: "2"



REJECT

Gerry Signed:_ Senator Devlin

SENATE

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51st Legislature

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SB 0150/03

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1	SENATE BILL NO. 150	1	WHEREAS, THE LEGISLATURE OF THE STATE OF MONTANA FINDS
2	INTRODUCED BY BISHOP	2	THAT THE ATTORNEY-IN-PACT EXEMPTION FROM THE REQUIREMENT
3	BY REQUEST OF THE DEPARTMENT OF COMMERCE	3	THAT A PERSON BE LICENSED AS A REAL ESTATE BROKER OR
4		4	SALESMAN SHOULD BE EXPANDED TO INCLUDE A GENERAL POWER OF
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO SEMERALLY	5	ATTORNEY.
6	REVISE THE ATTORNEY-IN-FACT EXEMPTION FROM REAL ESTATE	6	THEREFORE, THE LEGISLATURE OF THE STATE OF MONTANA
7	BROKER AND SALESMAN LICENSE REQUIREMENTS; AND AMENDING	7	FINDS IT APPROPRIATE TO EXPAND THE ATTORNEY-IN-FACT
8	SECTION 37-51-103, MCA."	8	EXEMPTION TO INCLUDE ONE BASED ON A GENERAL POWER OF
9		9	ATTORNEY AND TO LIMIT ALL ATTORNEY-IN-FACT EXEMPTIONS TO
10	WHEREAS, the Legislature of the State of Montana finds	10	OCCASIONAL USE UNDER CIRCUMSTANCES IN WHICH IT IS REASONABLY
11.	that there presently is an attorney-in-fact exemption from	11	CERTAIN THAT ADEQUATE SAFEGUARDS TO THE PUBLIC ARE
12	the requirement that a person be licensed as a real estate	12	MAINTAINED.
13	broker or salesman; AND	13	
14	WHEREAS, the Legislature of the State of Montana finds	14	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
15	that there is a potential use of the attorney-in-fact	15	Section 1. Section 37-51-103, MCA, is amended to read:
16	exemption by certain persons on a regular or consistent	16	*37-51-103. Exemptions. A single act performed for a
17	basis, thereby allowing those persons to avoid license	17	commission or compensation of any kind in the buying,
18	requirements and negating adequate safeguards to the	16	selling, exchanging, leasing, or renting of real estate or
19	public; AND	19	in negotiating therefor for others, except as hereinafter
20	THERBFORE;thebegislatureoftheBtate-of-Montana	20	specified, shall constitute the person performing any of
21	findsitappropriatetolimittheattorney-in-fact	21	such acts a real estate broker or real estate salesman. The
22	exemption	22	provisions of this chapter, however, shall not:
23	WHEREAS, THE LEGISLATURE OF THE STATE OF MONTANA FINDS	23	(1) apply to any person who, as owner or lessor, shall
24	THE PRESENT ATTORNEY-IN-FACT EXEMPTION IS LIMITED TO ONE	24	perform any of the aforesaid acts with reference to property
25	BASED ON A SPECIAL POWER OF ATTORNEY; AND	25	owned or leased by himself or to an auctioneer employed by
			-2- SB 150

REFERENCE BILL

the owner or lessor to aid and assist in conducting a public
 sale held by such owner or lessor;

з (2) apply to any person acting as attorney-in-fact under the A duly executed SPECIAL OR GENERAL power of 4 5 attorney from the owner of any real estate authorizing the 6 final-consummation-of-any-contract-for-the purchase, sale, 7 exchange, renting, or leasing of any real estate, unless the 8 person acting as attorney-in-fact does so regularly or 9 consistently for any-owner-or-lessor A PERSON OR PERSONS, 10 for or with the expectation of receiving a fee, commission, or other valuable consideration IN CONJUNCTION WITH A 11 BUSINESS OR FOR THE PURPOSE OF AVOIDING LICENSE 12 13 REQUIREMENTS;

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18 purpose of evaluation or appraising an estate in a probate
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assist in conducting a public sale held by any such officer;
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15 <u>NEW SECTION.</u> Section 2. Extension of authority. Any 16 existing authority to make rules on the subject of the 17 provisions of [this act] is extended to the provisions of 18 [this act].

-End-

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