

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 30

Introduced by Pahls, 31.

Read first time January 8, 2009

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Nebraska Real Estate License Act;

2 to amend sections 81-885.02, 81-885.05, 81-885.09,

3 81-885.10, 81-885.15, 81-885.24, 81-885.25, 81-885.29,

4 81-885.43, 81-885.44, 81-885.46, 81-885.48, and

5 81-887.03, Reissue Revised Statutes of Nebraska; to

6 change provisions relating to the act and the powers

7 of the State Real Estate Commission as prescribed; to

8 provide for civil penalties; to provide powers and duties

9 for the Attorney General; to harmonize provisions; to

10 repeal the original sections; and to outright repeal

11 section 81-885.47, Reissue Revised Statutes of Nebraska.

12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 81-885.01 to 81-885.55 and sections 1
2 and 10 of this act shall be known and may be cited as the Nebraska
3 Real Estate License Act.

4 Sec. 2. Section 81-885.02, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 81-885.02 After September 2, 1973, it shall be unlawful
7 for any person, directly or indirectly, to engage in or conduct,
8 or to advertise or hold himself or herself out as engaging in
9 or conducting the business, or acting in the capacity, of a real
10 estate broker, associate broker, or real estate salesperson within
11 this state without first obtaining a license as such broker,
12 associate broker, or salesperson, as provided in ~~sections 81-885.01~~
13 ~~to 81-885.48,~~ the Nebraska Real Estate License Act, unless he or
14 she is exempted from obtaining a license under section 81-885.04.

15 Sec. 3. Section 81-885.05, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 81-885.05 ~~Sections 81-885.01 to 81-885.48~~ The Nebraska
18 Real Estate License Act shall not apply to railroads and other
19 public utilities regulated by the State of Nebraska, or their
20 subsidiaries or affiliated corporations, or to the officers or
21 regular employees thereof, unless performance of any of the acts
22 described in subdivision (2) of section 81-885.01 is in connection
23 with the sale, purchase, lease, or other disposition of real
24 estate or investment therein unrelated to the principal business
25 activity of such railroad or other public utility or affiliated or

1 subsidiary corporation thereof.

2 Sec. 4. Section 81-885.09, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 81-885.09 The Attorney General shall render to the State
5 Real Estate Commission opinions on all questions of law relating to
6 the interpretation of ~~sections 81-885.01 to 81-885.48~~ the Nebraska
7 Real Estate License Act or arising in the administration thereof,
8 and shall act as attorney for the commission in all actions and
9 proceedings brought by or against it under or pursuant to ~~any of~~
10 ~~the provisions of sections 81-885.01 to 81-885.48.~~ the act. All
11 fees and expenses of the Attorney General arising out of such
12 duties shall be paid out of the State Real Estate Commission's
13 Fund.

14 Sec. 5. Section 81-885.10, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 81-885.10 The commission shall have the full power to
17 regulate the issuance of licenses and the activities of licensees
18 and to revoke or suspend licenses issued under the ~~provisions~~
19 ~~of sections 81-885.01 to 81-885.48,~~ Nebraska Real Estate License
20 Act, to censure licensees, and to enter into consent decrees. The
21 commission may, alone or in combination with such disciplinary
22 actions, impose a civil fine on a licensee for each violation
23 alleged in a complaint for which the commission has made a finding
24 of guilt, except that the total fine for such violations shall not
25 exceed two thousand five hundred dollars per complaint.

1 Sec. 6. Section 81-885.15, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 81-885.15 All fees collected under ~~sections 81-885.01 to~~
4 ~~81-885.48~~ the Nebraska Real Estate License Act shall be deposited
5 in the state treasury in a fund to be known as the State Real
6 Estate Commission's Fund. The commission may use such part of
7 the money in this fund as is necessary to be used by it in the
8 administration and enforcement of ~~sections 81-885.01 to 81-885.48.~~
9 the act. The fund shall be paid out only upon proper vouchers and
10 upon warrants issued by the Director of Administrative Services
11 and countersigned by the State Treasurer, as provided by law. The
12 expenses of conducting the office must always be kept within the
13 income collected and deposited with the State Treasurer by such
14 commission and such office, and the expense thereof shall not be
15 supported or paid from any other state fund. Any money in the State
16 Real Estate Commission's Fund available for investment shall be
17 invested by the state investment officer pursuant to the Nebraska
18 Capital Expansion Act and the Nebraska State Funds Investment Act.

19 Sec. 7. Section 81-885.24, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 81-885.24 The commission may, upon its own motion,
22 and shall, upon the sworn complaint in writing of any person,
23 investigate the actions of any broker, associate broker,
24 salesperson, or subdivider, ~~and~~ may censure the licensee or
25 certificate holder, revoke or suspend any license or certificate

1 issued under the Nebraska Real Estate License Act, or enter into
2 consent orders, and, alone or in combination with such disciplinary
3 actions, may impose a civil fine on a licensee pursuant to section
4 81-885.10, whenever the license or certificate has been obtained by
5 false or fraudulent representation or the licensee or certificate
6 holder has been found guilty of any of the following unfair trade
7 practices:

8 (1) Refusing because of religion, race, color, national
9 origin, ethnic group, sex, familial status, or disability to show,
10 sell, or rent any real estate for sale or rent to prospective
11 purchasers or renters;

12 (2) Intentionally using advertising which is misleading
13 or inaccurate in any material particular or in any way
14 misrepresents any property, terms, values, policies, or services
15 of the business conducted;

16 (3) Failing to account for and remit any money coming
17 into his or her possession belonging to others;

18 (4) Commingling the money or other property of his or her
19 principals with his or her own;

20 (5) Failing to maintain and deposit in a separate
21 non-interest-bearing checking account all money received by a
22 broker acting in such capacity, or as escrow agent or the temporary
23 custodian of the funds of others, in a real estate transaction
24 unless all parties having an interest in the funds have agreed
25 otherwise in writing;

1 (6) Accepting, giving, or charging any form of
2 undisclosed compensation, consideration, rebate, or direct profit
3 on expenditures made for a principal;

4 (7) Representing or attempting to represent a real estate
5 broker, other than the employer, without the express knowledge and
6 consent of the employer;

7 (8) Accepting any form of compensation or consideration
8 by an associate broker or salesperson from anyone other than his or
9 her employing broker without the consent of his or her employing
10 broker;

11 (9) Acting in the dual capacity of agent and undisclosed
12 principal in any transaction;

13 (10) Guaranteeing or authorizing any person to guarantee
14 future profits which may result from the resale of real property;

15 (11) Placing a sign on any property offering it for sale
16 or rent without the written consent of the owner or his or her
17 authorized agent;

18 (12) Offering real estate for sale or lease without the
19 knowledge and consent of the owner or his or her authorized agent
20 or on terms other than those authorized by the owner or his or her
21 authorized agent;

22 (13) Inducing any party to a contract of sale or lease
23 to break such contract for the purpose of substituting, in lieu
24 thereof, a new contract with another principal;

25 (14) Negotiating a sale, exchange, listing, or lease of

1 real estate directly with an owner or lessor if he or she knows
2 that such owner has a written outstanding listing contract in
3 connection with such property granting an exclusive agency or an
4 exclusive right to sell to another broker or negotiating directly
5 with an owner to withdraw from or break such a listing contract
6 for the purpose of substituting, in lieu thereof, a new listing
7 contract;

8 (15) Discussing or soliciting a discussion of, with an
9 owner of a property which is exclusively listed with another
10 broker, the terms upon which the broker would accept a future
11 listing upon the expiration of the present listing unless the owner
12 initiates the discussion;

13 (16) Violating any provision of sections 76-2401 to
14 76-2430;

15 (17) Soliciting, selling, or offering for sale real
16 estate by offering free lots or conducting lotteries for the
17 purpose of influencing a purchaser or prospective purchaser of real
18 estate;

19 (18) Providing any form of compensation or consideration
20 to any person for performing the services of a broker, associate
21 broker, or salesperson who has not first secured his or her license
22 under the Nebraska Real Estate License Act unless such person is
23 (a) a nonresident who is licensed in his or her resident regulatory
24 jurisdiction or (b) a citizen and resident of a foreign country
25 which does not license persons conducting the activities of a

1 broker and such person provides reasonable written evidence to
2 the Nebraska broker that he or she is a resident citizen of that
3 foreign country, is not a resident of this country, and conducts
4 the activities of a broker in that foreign country;

5 (19) Failing to include a fixed date of expiration in
6 any written listing agreement and failing to leave a copy of the
7 agreement with the principal;

8 (20) Failing to deliver within a reasonable time a
9 completed and dated copy of any purchase agreement or offer to buy
10 or sell real estate to the purchaser and to the seller;

11 (21) Failing by a broker to deliver to the seller in
12 every real estate transaction, at the time the transaction is
13 consummated, a complete, detailed closing statement showing all
14 of the receipts and disbursements handled by such broker for
15 the seller, failing to deliver to the buyer a complete statement
16 showing all money received in the transaction from such buyer and
17 how and for what the same was disbursed, and failing to retain true
18 copies of such statements in his or her files;

19 (22) Making any substantial misrepresentations;

20 (23) Acting for more than one party in a transaction
21 without the knowledge of all parties for whom he or she acts;

22 (24) Failing by an associate broker or salesperson to
23 place, as soon after receipt as practicable, in the custody of his
24 or her employing broker any deposit money or other money or funds
25 entrusted to him or her by any person dealing with him or her as

1 the representative of his or her licensed broker;

2 (25) Filing a listing contract or any document or
3 instrument purporting to create a lien based on a listing contract
4 for the purpose of casting a cloud upon the title to real estate
5 when no valid claim under the listing contract exists;

6 (26) Violating any rule or regulation adopted and
7 promulgated by the commission in the interest of the public and
8 consistent with the Nebraska Real Estate License Act;

9 (27) Failing by a subdivider, after the original
10 certificate has been issued, to comply with all of the requirements
11 of the Nebraska Real Estate License Act;

12 (28) ~~The broker or salesperson has been convicted~~
13 Conviction of a felony or ~~entered~~ entering a plea of guilty or nolo
14 contendere to a felony charge by a broker or salesperson;

15 (29) Demonstrating negligence, incompetency, or
16 unworthiness to act as a broker, associate broker, or salesperson,
17 whether of the same or of a different character as otherwise
18 specified in this section; or

19 (30) Inducing or attempting to induce a person to
20 transfer an interest in real property, whether or not for monetary
21 gain, or discouraging another person from purchasing real property,
22 by representing that (a) a change has occurred or will or may occur
23 in the composition with respect to religion, race, color, national
24 origin, ethnic group, sex, familial status, or disability of the
25 owners or occupants in the block, neighborhood, or area or (b) such

1 change will or may result in the lowering of property values, an
2 increase in criminal or antisocial behavior, or a decline in the
3 quality of schools in the block, neighborhood, or area.

4 Sec. 8. Section 81-885.25, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 81-885.25 (1) Before the commission censures a licensee,
7 imposes a civil fine, or before revoking or suspending revokes or
8 suspends a license, the commission shall send to the licensee a
9 copy of the complaint by certified mail which contains the charges
10 against the licensee and, unless the licensee waives the right to
11 a hearing and has executed a consent order, give the licensee a
12 hearing on the matter.

13 (2) The license holder shall have full authority to be
14 heard in person or by counsel before the commission in reference
15 to such charges. The commission shall, at least twenty days prior
16 to the date set for hearing, notify the licensee in writing of
17 the date and place of the hearing. Such notice may be served by
18 delivering it personally to the license holder or by sending it
19 by either registered or certified mail to the last-known business
20 address of such license holder. If the license holder is an
21 associate broker or a salesperson, the commission shall also notify
22 the broker employing the license holder by mailing a copy of such
23 notice to the broker's last-known business address.

24 Sec. 9. Section 81-885.29, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 81-885.29 After the hearing the commission shall state in
2 writing, officially signed by the chairperson and attested to by
3 the director, its findings and determination and its order in the
4 matter. If the commission determines that the license holder has
5 been guilty of any violation of the Nebraska Real Estate License
6 Act or the rules and regulations of the commission, ~~his or her~~
7 ~~license shall be revoked or suspended forthwith or~~ the commission
8 may revoke or suspend the license, enter an order censuring
9 the license holder, or impose a civil fine pursuant to section
10 81-885.10. The execution of a penalty of suspension may be stayed
11 by the commission and the licensee may be placed on probation for
12 the suspension period, after satisfactory completion of which his
13 or her license shall be fully reinstated. Any violation of the
14 act or the rules and regulations by the licensee during the period
15 of probation shall cause the immediate execution of the suspension
16 penalty.

17 Sec. 10. (1) All civil fines collected pursuant to the
18 Nebraska Real Estate License Act shall be remitted to the State
19 Treasurer for distribution in accordance with Article VII, section
20 5, of the Constitution of Nebraska.

21 (2) Any civil fine imposed pursuant to the act which
22 remains unpaid for more than sixty days shall constitute a debt
23 to the State of Nebraska which may be recovered by the Attorney
24 General, along with reasonable attorney's fees and court costs, in
25 a proper form of action in the name of the state in the district

1 court of the county in which the violator resides. The commission
 2 shall consider such debt to be grounds for denial, refusal to
 3 renew, or refusal to reinstate a license under the act or grounds
 4 for additional disciplinary action by the commission.

5 Sec. 11. Section 81-885.43, Reissue Revised Statutes of
 6 Nebraska, is amended to read:

7 81-885.43 ~~Whenever,~~ Except as provided in subsection
 8 (2) of section 10 of this act, whenever, in the judgment of
 9 the commission, any person has engaged or is about to engage
 10 in any acts or practices which constitute or will constitute a
 11 violation of ~~sections 81-885.01 to 81-885.48,~~ the Nebraska Real
 12 Estate License Act, the Attorney General may maintain an action
 13 in the name of the State of Nebraska, in the district court of
 14 the county ~~wherein~~ in which such violation or threatened violation
 15 occurred, to abate and temporarily and permanently enjoin such acts
 16 and practices and to enforce compliance with ~~sections 81-885.01 to~~
 17 ~~81-885.48.~~ the act. The plaintiff shall not be required to give any
 18 bond nor shall any court costs be adjudged against the plaintiff.

19 Sec. 12. Section 81-885.44, Reissue Revised Statutes of
 20 Nebraska, is amended to read:

21 81-885.44 The commission by and through its director
 22 may prefer a complaint for violation of ~~sections 81-885.01 to~~
 23 ~~81-885.48.~~ the Nebraska Real Estate License Act.

24 Sec. 13. Section 81-885.46, Reissue Revised Statutes of
 25 Nebraska, is amended to read:

1 81-885.46 Any real estate license or subdivision
2 certificate issued prior to September 2, 1973, shall, for purposes
3 of renewal, be considered to have been originally issued under the
4 ~~provisions of sections 81-885.01 to 81-885.48.~~ Nebraska Real Estate
5 License Act.

6 Sec. 14. Section 81-885.48, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 81-885.48 ~~The~~ Except for purposes of section 81-885.04,
9 the terms employ, employed, employer, or employee as used in
10 ~~sections 81-885.01 to 81-885.03 and 81-885.05 to 81-885.47,~~
11 the Nebraska Real Estate License Act shall not necessarily be
12 construed to imply an employer and employee relationship. The
13 use of such terms shall not prohibit the establishment of any
14 independent contract or other relationship between a business
15 and an individual, between individuals, or between businesses,
16 including an employer and employee relationship.

17 Sec. 15. Section 81-887.03, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 81-887.03 Nothing contained in sections 81-887.01 to
20 81-887.03 shall be construed to permit any person to conduct a sale
21 of real estate without first complying with the requirements of
22 ~~sections 81-867 to 81-887.~~ the Nebraska Real Estate License Act.

23 Sec. 16. Original sections 81-885.02, 81-885.05,
24 81-885.09, 81-885.10, 81-885.15, 81-885.24, 81-885.25, 81-885.29,
25 81-885.43, 81-885.44, 81-885.46, 81-885.48, and 81-887.03, Reissue

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1 Revised Statutes of Nebraska, are repealed.

2 Sec. 17. The following section is outright repealed:

3 Section 81-885.47, Reissue Revised Statutes of Nebraska.